

23 MAY 1947

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23 MAY 1947

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Friday, 23 May 1947

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INTERNATIONAL MILITARY TRIBUNAL
FOR THE FAR EAST
Court House of the Tribunal
War Ministry Building
Tokyo, Japan

The Tribunal met, pursuant to adjournment,
at 0930.

- - -

Appearances:

For the Tribunal, same as before with the
exception of: HONORABLE JUSTICE NORTHCROFT, Member
from New Zealand and HONORABLE JUSTICE JU-AO MEI,
Member from the Republic of China, not sitting.

For the Prosecution Section, same as before.

For the Defense Section, same as before.

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(English to Japanese and Japanese
to English interpretation was made by the
Language Section, IMTFE.)

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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: Major Blakeney.

4 MR. BLAKENEY: By leave of the Tribunal
5 I should like to advert briefly to a matter which
6 has been discussed once or twice in chambers. This
7 is the question of the request of the defense to be
8 permitted from time to time to withdraw or withhold
9 defendants from the dock for consultation during
10 the progress of the trial. It has been indicated
11 in chambers that, subject to proper security restric-
12 tions, there might be no objection to this course;
13 and as the point has been reached where the necessity
14 for consultation with our clients is very urgent,
15 we wish now to renew the request for an order to
16 that effect.

17 THE PRESIDENT: Subject to such security
18 measures as the Supreme Commander may direct, we
19 see no objection and you will be at liberty to do
20 that, Major, that is, to withhold them for a ses-
21 sion or part of a session. I suppose you would
22 withhold only one or two at a time.

23 MR. BLAKENEY: I should assume so, sir.

24 Thank you.

25 THE PRESIDENT: Major Furness.

1 MR. FURNESS: If your Honor please, I would
2 like the record to show that when I returned to my
3 office after the session yesterday afternoon, I
4 found the witness HAYASHI, who had testified during
5 the afternoon.

6 He brought with him the books which he
7 thought were required under the Court's direction,
8 and they were immediately deposited with the Secre-
9 tariat. The prosecution was immediately notified
10 and he conferred with one of their representatives,
11 and is conferring with him now.

12 THE PRESIDENT: Mr. Tavenner.

13 MR. TAVENNER: For the further information
14 of the Tribunal: It developed that the register
15 which was produced did not cover the period of time
16 in question, and that another document produced
17 was not that which was called for; but we are work-
18 ing these matters out with the defense, and as soon
19 as a proper investigation has been made, it will be
20 reported to the Tribunal.

21 MR. FURNESS: If your Honor please, I
22 would like to add further that if there is any doubt
23 the Foreign Office burned down, I would like the
24 Court to go and see the site it formerly occupied.
25

THE PRESIDENT: I see it every day.

MATSUDAIRA

DIRECT

1 MR. FURNESS: We call as our next witness
2 MATSUDAIRA, Koto. The number of the affidavit is
3 1525.

4 K O T O M A T S U D A I R A, called as a witness
5 on behalf of the defense, being first duly
6 sworn, testified through Japanese interpreters
7 as follows:
8

DIRECT EXAMINATION

9
10 BY MR. FURNESS:

11 Q That is your name, age, and address?

12 A My name is MATSUDAIRA, Koto; my age, 45;
13 my present residence, No. 529 3-Chome, Shimomeguro,
14 Meguro-ku, Tokyo.

15 MR. FURNESS: May the witness be shown de-
16 fense document No. 1525?

17 (Whereupon, a document was handed to
18 the witness.)

19 Q Is that your affidavit?

20 A Yes.

21 Q Did you sign and swear to it?

22 A Yes, I did.

23 Q Are the facts stated therein true and
24 correct?

25 A The contents are true and correct.

MATSUDAIRA

DIRECT

1 MR. FURNESS: I offer in evidence defense
2 document No. 1525.

3 THE PRESIDENT: Admitted on the usual terms.

4 CLERK OF THE COURT: Defense document
5 1525 will receive exhibit No. 2637.
6

7 (Whereupon, the document above refer-
8 red to was marked defense exhibit 2637 and
9 received in evidence.)

10 MR. FURNESS: I will read exhibit 2637,
11 omitting the formal parts.

12 "1. I was First Secretary of the Japanese
13 Embassy in Moscow from October 1944 until the out-
14 break of war between Japan and the U.S.S.R. in
15 August 1945, under Ambassador SATO, Naotake.

16 "2. Returning to the Embassy from an inter-
17 view with Foreign Minister Molotov on 8 August 1945,
18 Ambassador SATO announced the receipt from Molotov
19 of the Soviet declaration of war upon Japan, and
20 directed the destruction of the records and archives
21 of the Embassy in accordance with the standard pro-
22 cedure. The destruction of the records was accord-
23 ingly carried out under my direction. Owing to lack
24 of time for selection, the destruction of documents
25 was necessarily indiscriminate, and included the
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MATSUDAIRA

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22 ingly carried out under my direction. Owing to lack
23 of time for selection, the destruction of documents
24 was necessarily indiscriminate, and included the
25 burning among other things of the Embassy's complete

MATSUDAIRA

DIRECT

1 files of originals of incoming and drafts and copies
2 of outgoing telegrams, whether coded or in plain
3 language, notes and memoranda received from the
4 Soviet Government, copies of our replies thereto,
5 memoranda of conversations between members of the
6 embassy staff and Soviet officials, and other such
7 records. Such destruction of records by an embassy
8 upon the outbreak of war between the home country
9 and the country within which the embassy is located
10 is routine and is universally practiced.

11 "3. Since all records were then being
12 destroyed, copies were not made of the four tele-
13 grams (handed that day to the Soviet representative
14 designated by the Soviet Foreign Office to receive
15 them for transmission to Tokyo) conveying to the
16 Japanese Government the receipt of the declaration
17 of war and related matters, and the drafts thereof
18 were destroyed."

19 You may cross-examine.

20 THE PRESIDENT: Mr. Tavenner.

21 MR. TAVENNER: If the Tribunal please,
22 the prosecution does not desire to cross-examine.

23 MR. FURNESS: May the witness be released
24 on the usual terms?

25 THE INTERPRETER: The witness just said,

1 "May I say a few words?"

2 THE PRESIDENT: No.

3 You are released on the usual terms.

4 (Whereupon, the witness was released.)

5 MR. FURNESS: I next offer in evidence
6 defense document No. 1561, which is also a telegram
7 from the American Charge d' Affair to the Secretary
8 of State, dated July 21, 1938. This is offered to
9 prove the Japanese Ambassador was not in Moscow
10 when the first protest was made, but returned
11 immediately in an effort to settle the incident.

12 THE PRESIDENT: General Vasiliev.

13 GENERAL VASILIEV: Your Honor, I object
14 to the introduction of this document. Parts of the
15 record of conversations between Litvinov and SHIGE-
16 MITSU dealing with the events in the Lake Khasan
17 area were presented in evidence by the prosecution,
18 and the balance is being presented by the defense.
19 Therefore, information concerning these conversations
20 emanating from third parties is unnecessary. It
21 will only possibly mislead the Tribunal as to the
22 real contents of the conversation. I ask the
23 Tribunal to reject the document.

24 THE PRESIDENT: We haven't seen it yet.

25 Distribute it, please.

1 MR. FURNESS: Shall I reply, your Honor?

2 THE PRESIDENT: The Court upholds the objec-
3 tion and rejects the document.

4 MR. FURNESS: I should like to make reply
5 on it.

6 THE PRESIDENT: I don't think it would make
7 any difference, but we will hear what you have to
8 say. It is just rumor, that is all it is.

9 MR. FURNESS: Certainly the fact the prose-
10 cution presented its side of the case from official
11 documents and I am presenting documents obtained from
12 Russia does not prevent us from presenting other evi-
13 dence.

14 THE PRESIDENT: That is conceded.

15 MR. FURNESS: Furthermore, part of the docu-
16 ment states that the Japanese ambassador just re-
17 turned from a trip abroad yesterday. This evi-
18 dence is offered to prove that.

19 THE PRESIDENT: That is quite irrelevant
20 and immaterial.

21 MR. FURNESS: I respectfully disagree, but
22 accept the Court's decision.

23 THE PRESIDENT: The Tribunal adheres to
24 its decision.

25 MR. FURNESS: I now offer in evidence

1 defense document No. 1549, a telegram from Ambassa-
2 dor Grew, dated August 4, 1938, to the Secretary of
3 State, reporting the situation in the Japanese Capi-
4 tol.

5 It is offered to show that the Japanese
6 Government did not expect or desire the incident
7 to develop into war.

8 THE PRESIDENT: General Vasiliev.

9 GENERAL VASILIEV: If your Honor please, I
10 object to the introduction of this document.

11 Part of this telegram sent by Mr. Grew from
12 Tokyo to Washington deals with the events in the
13 Lake Khasan area, and re-tells the Japanese reports
14 on them. If these Japanese reports could be in some
15 way material, then it is obvious that their contents
16 should be studied from original sources and not from
17 Mr. Grew's telegram.

18 The second part of the telegram consists
19 of Mr. Grew's opinions and conclusions. They cannot
20 have any probative value for this Tribunal. Mr.
21 Grew himself stated that the Japanese press had been
22 the only source of information. It stated these are
23 the words used in the telegram -- these are the
24 actual words used in the telegram. I repeat: This
25 was the only source of information by which it had

1 been possible to judge of the relations between the
2 U.S.S.R. and Japan. Therefore, this document should
3 not be admitted in its entirety, as having no proba-
4 tive value.

5 MR. FURNESS: If the Court please, this
6 reports the situation in the capitol of Japan at the
7 time of the incident. It is the analysis of an ex-
8 pert in regard to public opinion and governmental
9 opinion.

10 THE PRESIDENT: But it is mainly Mr. Grew's
11 opinion. Nearly every line of it is Mr. Grew's
12 opinion about something.

13 MR. FURNESS: And I say that a man who is
14 a diplomat writes in the course of years between
15 1904 and 1938 as an expert.

16 THE PRESIDENT: You could make the same
17 claim, and it was made, for Mr. Ballantine. but we
18 did not allow that prosecution's witness to be
19 treated as an expert. These are matters for us and
20 not for experts, if they be such.

21 MR. FURNESS: The Tribunal did not talk with
22 members of the Japanese Government at that time; Mr.
23 Grew did, and in that sense he is entirely different
24 from Mr. Ballantine.

25 THE PRESIDENT: That is not so. Ballan-

1 tine's contacts with the Japanese were just as im-
2 portant as Mr. Grew's, at a more vital stage.

3 MR. FURNESS: The statements that he made
4 were far more objectionable in his affidavit and
5 were not contemporary. These are contemporary at
6 the time, without any trial in mind. They are in
7 the same class as the innumerable telegrams accep-
8 ted from the German Ambassador, Ott, some of them
9 in the Russian phase of the prosecution's case.
10 I submit that Mr. Grew is a far more reliable source
11 and that this telegram has far greater probative
12 value and should be received.

13 THE PRESIDENT: By a majority the objec-
14 tion is upheld and the document rejected.

15 MR. FURNESS: I offer in evidence defense
16 document No. 1504, from Litvinov's diary of August
17 7.

18 This is offered to prove that even though
19 no Japanese troops were on the territory claimed by
20 the Soviet, that government refused to agree to a
21 cessation of hostilities and peaceful settlement of
22 the incident, which proposal the Japanese Government
23 stated still remained valid, and that in order to
24 insure the ending of hostilities the Japanese Am-
25 bassador proposed withdrawal of forces of both countries.

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21 cessation of hostilities and peaceful settlement of
22 the incident, which proposal the Japanese Government
23 stated still remained valid, and that in order to
24 insure the ending of hostilities the Japanese Am-
25 bassador proposed withdrawal of forces of both countries.

1 THE PRESIDENT: Admitted on the usual
2 terms.

3 CLERK OF THE COURT: Defense document 1504
4 will receive exhibit No. 2638.

5 (Whereupon, the document above
6 referred to was marked defense exhibit 2638
7 and received in evidence.)
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1 Excerpts from this document were intro-
2 duced into evidence by the prosecution, exhibit
3 758, page 718 -- the page number is wrong -- but
4 only one short excerpt was read, the first para-
5 graph of the document which I do not intend to read.
6 I shall read only portions of this document, the
7 beginning of the second paragraph.

8 "SHIGEMITSU said that he was surprised at
9 my statement. The Japanese Government on August
10 4 through him brought out the proposal for the
11 cessation of military action and the regulation of
12 the incident by diplomatic negotiations. But in
13 reply to this proposal -- said SHIGEMITSU -- you
14 demanded the Japanese troops' withdrawal behind the
15 line of the place which you consider yours. I was
16 disappointed with such an irreconcilable statement.
17 On the other hand, the Japanese troops on the spot
18 have received solemn instructions from the Center not
19 to go even one step beyond the boundary, as Japan
20 understands it. In spite of this, the Soviet side
21 brought aviation into operation. Such actions
22 are the most dangerous ones, which hinder the regula-
23 tion of the incident. Having violated the boundary
24 of Manchukuo and Japan, the Soviet air force bombed
25

1 those undefended areas that bore no relation to the
2 place of the incident, as a result of which there
3 were wounded and killed. In spite of the fact that
4 the Soviet side brought its air force into opera-
5 tion, the Japanese side did not resort to using its
6 air forces and is refraining in every way from offen-
7 sive and provocative action, limiting itself to
8 defending the frontier. According to exact informa-
9 tion received by me from the scene, after the last
10 talk on August 4th at the place there occurred a heavy
11 battle, which was a result of the Soviet troops
12 attacking the Japanese defense line. This attack
13 was carried on day and night. The results of this,
14 said SHIGEMITSU, you are probably acquainted with.
15 Therefore, for the military actions which have taken
16 place since the last talk, the Japanese side can
17 not assume the responsibility. Moreover, the actions
18 of the Soviet troops do not correspond with the
19 statement which you made to me last time to the effect
20 that you were ready to solve the incident peacefully.
21 In this connection, I must enter a protest against
22 these actions of the Soviet troops. At the same
23 time I state that my proposal for the cessation of
24 military action and the regulation of the incident
25

by peaceful means remains valid."

SHIGEMITSU's statements are described as follows:

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1 "To SHIGEMITSU's statement I replied as
2 follows:

3 "Of course, if one occupies the territory of
4 another along a definite line and then defends it
5 actively with all arms, then it will, of course, be
6 possible to talk about a defense line. But the Japa-
7 nese troops were defending not Manchurian territory,
8 but Soviet territory against Soviet troops. This is
9 a provocation and an attack. The Japanese Government
10 has no grounds for a protest.

11 "Only the Soviet Government can protest. But
12 this is not worth arguing about. As for the proposals
13 which the Ambassador made last time and renewed to-day,
14 Japanese troops were forced to evacuate Soviet terri-
15 tory. If they stop firing on Soviet territory from
16 the Manchurian side the proposal for cessation of mili-
17 tary action will be realized, because we have no reason
18 to fire on Manchurian territory when there is no firing
19 on our side from there."

20 Skipping to the next paragraph:

21 "SHIGEMITSU stated that the Japanese troops
22 did not intend to invade even one foot Soviet terri-
23 tory. But Japanese troops must defend every foot of
24 Manchurian territory. Because of this the Japanese
25 troops had to take necessary measures for the defense

1 of Manchukuo territory against attacks from the Soviet
2 side. Consequently, we are dealing only with the re-
3 pulse of an attack. I agree that this is not worth
4 arguing over. If I am not mistaken, I understood you
5 to say that if the Japanese troops would not fire and
6 would remain in the same position they are in to-day,
7 the Soviet side would also stop firing and all other
8 military action."

9 Skipping two sentences:

10 "At any rate, the question comes down to
11 whether I understood correctly that if the Japanese
12 side did not fire and the Japanese troops remained in
13 the positions they occupied to-day, the Soviet side
14 would also stop firing. The Japanese side is per-
15 sistently trying to regulate the present incident.
16 From the very beginning of the outbreak of the inci-
17 dent the Japanese side has tried to regulate it on a
18 reasonable basis. It is ridiculous to talk about
19 there being intentions of drawing the U S S R into a
20 war with Japan. I think that the Soviet side is
21 creating various misunderstandings in their relations
22 with Japan.

23 "I told SHIGEMITSU that according to my in-
24 formation there were no longer any Japanese troops in
25 Soviet territory. If that is so and if they will not

1 try to violate our boundary again, and what our bound-
2 ary is (I have already explained to the Ambassador
3 many times), and if there is no firing on our terri-
4 tory from the Manchurian side, the Soviet troops will
5 also cease fire. On the contrary, if the Japanese
6 troops again appear suddenly on our territory and if
7 the firing from the Manchurian side is continued, our
8 troops will not be able to cease military actions
9 either. Such is our proposition.

10 "SHIGEMITSU asked if he might understand my
11 statement as follows: If, beginning the 7th Japanese
12 troops do not attack Soviet troops and if firing from
13 the Manchurian side is stopped, the Soviet side will
14 not attack Japanese troops and not fire and bomb from
15 the air either. At present the Japanese side is not
16 making attacks on Soviet troops. They are only de-
17 fending themselves from attacks from the Soviet side.
18 May I understand, said SHIGEMITSU, further, that an
19 immediate order will be given to the Soviet troops
20 not to attack Japanese troops. If so, the represent-
21 atives of the troops on both sides will be able to
22 enter into negotiations on the spot concerning the
23 cessation of military operations.

24 "I told SHIGEMITSU that he had not understood
25 me entirely correctly, because he was trying to con-

1 dition everything by the date and the attack while
2 the center of gravity should lie in the problem of
3 territory. Our troops will not attack Japanese troops
4 as long as Japanese troops are situated on the other
5 side of what we consider the boundary. In case, on
6 the contrary, they cross the border, we will attack
7 them on the 7th, 8th or 9th or other time. I don't
8 know that it is necessary to issue a special command
9 to our troops, because they always have orders to use
10 arms exclusively for the repulse of attacks. If these
11 attacks cease, our troops will not resort to arms.

12 "In reply on this SHIGEMITSU said: In the
13 problem of territory and boundary we don't have a
14 common opinion. Japanese troops must defend Manchurian
15 territory. Therefore, first of all it is necessary
16 that Soviet troops should not violate this boundary.
17 If, as you say, there are no longer any Japanese sol-
18 diers on Soviet territory, the problem of territory
19 is not worth digging into. The question whether
20 Japanese troops will attack hereafter depends entirely
21 upon whether the Soviet troops attack the Japanese.
22 Until now, the Japanese side has exercised restraint
23 in the use of arms. If, however, attacks from the
24 Soviet side take place even in the future it will
25 create undesirable consequences. However, you say

1 that Soviet troops will not attack Japanese troops
2 and will not fire at and bomb them. If such is the
3 position of the Soviet side it may be said that the
4 Japanese side also will not resort to attacks and
5 firing."

6 Skipping to page 4, the paragraph beginning
7 "I point out", Litvinov speaking:

8 "I point out to SHIGEMITSU that when we
9 speak of the frontier we mean the existing frontier
10 established by the Khunchun and other agreements and
11 it is the only frontier we can speak of.

12 "SHIGEMITSU's reply is, that according to
13 their interpretation of the Khunchun agreement, the
14 Japanese party considers that the frontier before
15 July 11 should be the one between Manchukuo and the
16 U.S.S.R.

17 "It seems that the Changkufeng hill is a
18 Manchurian territory. Therefore, it is desirable that
19 the Soviet party should not attack the Japanese troops
20 even if Changkufeng were now in the hands of the
21 Japanese.

22 "I say to SHIGEMITSU, I am afraid there is
23 no use of conversing any longer and we had better dis-
24 continue the talk. We have shown the frontier on the
25 map. The Bezimyannaya and Changkufeng hills are on

1 the Soviet territory. We shall defend them at any
2 cost and we shall not yield an inch. If the Ambassa-
3 dor does not agree with us we had better discontinue
4 the conversation.

5 "SHIGEMITSU stated that on the problem of
6 the boundary line there was a difference in opinion
7 on both sides from the very beginning. He told me
8 from the very beginning that the Japanese side did
9 not agree with the opinion of the Soviet side. The
10 Japanese side cannot change its original opinion even
11 now. Therefore, there should not be any misunderstand-
12 ings here. As for the cessation of military action,
13 he, SHIGEMITSU, from the very beginning, understood
14 me that the Soviet side welcomed it. Both to-day and
15 last time, he had heard from me a clear answer that if
16 the Japanese troops did not attack the Soviet side also
17 would stop attacking. It was a matter of how to stop
18 the military operations in fact. He, SHIGEMITSU, con-
19 sidered it to be reasonable that the cessation of
20 military operations might be achieved, if both sides
21 would withdraw a specified distance from the line that
22 they were occupying. This would mean a factual cessa-
23 tion of military action. The problem of the boundary
24 might be considered in the negotiations between the
25 representatives of both sides.

1 Skipping now to page 6, the next full
2 paragraph:

3 "As I pointed out last time, we do not object
4 to the redemarcation of this sector. But I call your
5 attention to the fact that we do not mean the establish-
6 ment of a new frontier, but the redemarcation of the
7 frontier established by the Hunchun agreement. There-
8 fore, it will be useless to commence this work unless
9 the recognition of the Hunchun agreement with the map
10 and the protocols attached, is set as principle of it.

11 "SHIGEMITSU said that such a redemarcation
12 might be effected in the said sector on the basis of
13 existing materials and agreements. The Japanese side
14 does not object to the fact that the Hunchun agreement
15 would be one of the materials to be studied. However,
16 along with it the materials to be submitted by Man-
17 choukuo should be studied. Such work, of course, should
18 be conducted between Manchoukuo and the U.S.S.R., but
19 Japan would not withhold necessary help. His, SHIGE-
20 MITSU's proposal, however, envisaged the following.
21 Without awaiting the results of the labors of such a
22 commission, both sides should cease military opera-
23 tions, retaining the positions held to-day. As a re-
24 sult of the withdrawal of troops of both sides there
25 would be created an empty sector. If the redemarcation

1 of this sector were carried out, too, all the data and
2 materials at the disposal of the Soviet, Manchurian,
3 and Japanese sides would be utilized in the work of
4 the commission."
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1 I now offer in evidence defense document
2 No. 1551, a telegram from the United States Charge
3 d'Affaires in Moscow to the Secretary of State, dated
4 August 9, 1938, reporting the situation in Moscow on
5 that date from a neutral standpoint.

6 THE PRESIDENT: General Vasiliev.

7 GENERAL VASILIEV: Your Honor, I object to
8 the introduction of this document. This telegram
9 deals with the opinions of a third party in the events
10 in the Lake Khasan area and partly describes the course
11 of the events. As to the course of events, and particu-
12 larly the course of hostilities, the third party has no
13 relation to them at all and, consequently, its evidence
14 should be rejected.

15 There is other better evidence of this matter.
16 The opinion of the third party on these events and on
17 their nature has no significance whatsoever to the
18 Tribunal. Moreover, these opinions are not based on
19 a study of the facts but mainly on the conversations
20 with some persons and are only personal impressions
21 derived from these conversations by the author of the
22 telegram.

23 This telegram describes the suppositions of
24 some anonymous foreign circles and certainly has no
25 probative value at all. It is not known who were

1 these foreign circles and why this Tribunal should accept
2 their opinions.

3 If the Tribunal please, I ask you to reject
4 this document.

5 MR. FURNESS: If the Tribunal please, it seems
6 to me that the fact that this is a report from a third
7 party government, not interested in either side of the
8 dispute, adds to its probative value rather than detracts.

9 THE PRESIDENT: It is nothing but Mr. Grew's
10 understandings and speculations; nothing else -- Mr.
11 Kirk's.

12 MR. FURNESS: His government accepted them
13 as of great value. Otherwise, they wouldn't have
14 occupied the positions they occupied.

15 THE PRESIDENT: You have got no reason for stat-
16 ing that the United States Government regard this
17 particular document as of great value and even if they
18 did that wouldn't be a determining factor.

19 GENERAL VASILIEV: May I add a few words, sir?

20 MR. FURNESS: I object to being interrupted,
21 and I also object to the prosecution being heard twice.

22 THE PRESIDENT: That objection should be upheld.
23 It has been upheld before.

24 MR. FURNESS: This type of telegram, diplomatic
25 message, has been received against these accused. I

1 think it should be received when it is in favor of them.

2 THE PRESIDENT: By a majority the Court upholds
3 the objection and rejects the document.

4 MR. FURNESS: I now offer in evidence defense
5 document No. 1564, also a telegram from the American
6 Charge d'Affaires to the Secretary of State, dated
7 August 11, 1938, reporting an official communique relat-
8 ing to the conference between the Japanese Ambassador
9 and Peoples Commissar for Foreign Affairs, regarding
10 negotiations for amicable settlement of the incident.

11 THE PRESIDENT: General Vasiliev.

12 GENERAL VASILIEV: Your Honor, I object to this
13 document. This report is absolutely immaterial. There
14 was a special Soviet-Japanese communique about the
15 cessation of hostilities in the Lake Khasan area and
16 about the terms of this agreement. No other confirma-
17 tion of this fact is necessary.

18 The contents of this communique is given in
19 one of the telegrams of the same series of defense
20 documents. That is document No. 1567. In our sub-
21 mission it is sufficient to introduce only this docu-
22 ment. Besides, this question is dealt with in detail
23 in the conversations between Litvinov and SHIGEMITSU
24 and that exhausts this question fully.

25 MR. FURNESS: If the Court please, I haven't

1 got defense document 1567. Is it on my order of proof?

2 THE PRESIDENT: Well, you had better prove
3 that first. That is the agreement itself, I understand.

4 MR. FURNESS: This is an entirely different
5 document, if your Honor please. It is another telegram
6 from Kirk dated July 22 reporting a conversation of
7 July 20.

8 THE PRESIDENT: Well, that can't relate to
9 the agreement because the document now tendered is
10 August the 11th.

11 MR. FURNESS: I remember that I withdrew docu-
12 ment No. 1567 because the Court felt it was a duplica-
13 tion of defense document 1540.

14 In place of document 1564 I would be very glad
15 to tender defense document No. 1610 which is a Tass
16 communique of August 11, taken from Pravda, organ of
17 the Central Committee of the all Union Communist Party.
18 I understand from the Soviet Prosecutor that they will
19 admit that Tass is an official agency of the Soviet
20 Government and that its communiques are official
21 communiques of that government.

22 THE PRESIDENT: The Tass newspaper has not
23 been served on the Clerk of the Court. That is document
24 1610. Are you sure you haven't it?

25 MR. FURNESS: I think that a copy was brought

1 to him just before the session, your Hono.

2 CLERK OF THE COURT: We don't have it.

3 GENERAL VASILILV: May I say a few words, your
4 Honor?

5 THE PRESIDENT: Well, if it is agreed that
6 substantially document 1564 is the same, it perhaps
7 can be accepted instead except, of course, the last
8 two paragraphs which are not part of the agreement
9 apparently. They report terms in the agreement accord-
10 ing to 1564

11 MR. FURNESS: It is not an agreement, your
12 Honor. It is proposals by the Soviet Government. The
13 last two paragraphs are direct quotations from the Tass
14 dispatch.

15 THE PRESIDENT: The quotation marks exclude
16 the last two paragraphs, but if you are satisfied of
17 it there seems to be no reason why we should not admit
18 this document to save time.

19 MR. FURNESS: I assure you it is, sir, and I
20 also assure you that we have checked Kirk's telegram
21 with the Pravda translation and it checks.

22 THE PRESIDENT: We admit document 1564 on the
23 assumption that it is in the same terms as the Tass
24 communique until you produce something better; that is,
25 until the prosecution produce something better now or

1 in rebuttal.

2 The objection is overruled and the document
3 admitted on the usual terms.

4 CLERK OF THE COURT Defense document 1564
5 will receive exhibit No. 2639.

6 (Whereupon, the document above re-
7 ferred to was marked defense exhibit No. 2639
8 and received in evidence.)

9 THE PRESIDENT: That is a majority decision.

10 MR. FURNESS: I want to say that I would have
11 submitted defense document 1610 in place of this docu-
12 ment but it had not yet been processed. I will read
13 only the Tass dispatch commencing "yesterday."

14 THE MONITOR: Mr. Furness, will you indicate
15 from what portion are you starting, and so forth?

16 Mr. Furness, in case you decide to stop or
17 omit some portion --

18 MR. FURNESS: All right. I will read the whole
19 thing. It will take less time.

20 "Referring to my telegram of August 11, 9 a.m.,
21 following is text of Tass communique issued early this
22 morning:

23 "'Yesterday, August 10, the Japanese Ambassador
24 Mr. SHIGEMITSU' again visited the Peoples Commissaire
25 for Foreign Affairs comrade Litvinov, after an exchange

1 of opinions, the Peoples Commissaire made in the name
2 of the Soviet Government the following proposals.

3 "One. The Japanese and Soviet forces shall
4 cease all military activities on August 11 at 12 noon
5 local time. Instructions to that effect to be issued
6 immediately by the Governments of the Soviet Union and
7 Japan.

8 "Two. Japanese as well as Soviet troops shall
9 remain on those lines which they occupied at midnight
10 local time on August 10.

11 "Three. For the redemarcation of the portion
12 of the frontier in dispute there shall be created a mixed
13 commission of two representatives from the Soviet Union
14 and two representatives from the Japanese Manchurian
15 side with an umpire selected by agreement of both
16 parties from among the citizens of a third state.

17 "Four. The Commission for the Redemarcation
18 shall work on the basis of agreements and maps bearing
19 the signatures of plenipotentiary representatives of
20 Russia and China.'

21 "Ambassador SHIGEMITSU accepted in full the
22 first two proposals having refused arbitration. Litvinov
23 pointed out that the most effective guarantee of the
24 achievement of an agreement for redemarcation would be
25 the presence on the commission of an unbiased disinterested

1 umpire but in view of the objection of the Ambassador
2 he did not insist upon arbitration. This agreement is
3 considered to have been reached on the third point also.

4 "An agreement was not reached on the question
5 of the basis of the work of the Commission for Redemar-
6 cation. Ambassador SHIGEMITSU proposed to use as a
7 basis also other material which up to the present time
8 had not been presented to the Soviet Union and concern-
9 ing which it therefore had no knowledge. Mr. SHIGEMITSU
10 promised however to inquire of his government on this
11 question and to amicably answer at the earliest
12 possible moment."

13 It should be pointed out that the evidence
14 produced indicates that the appointment of a mixed
15 commission for the settlement of the frontier dispute
16 had been suggested by the Japanese Government as far
17 back as 13 December 1932 by Count UCHIDA, in his
18 correspondence regarding the conclusion of a non-agres-
19 sion pact, and by SHIGEMITSU, Japanese Ambassador, in
20 his conferences of 20 July 1938 and 4 August 1938.

21 THE PRESIDENT: Where did you read that from,
22 Major?

23 MR. FURNESS: From my running comment, your
24 Honor. If I didn't point out that I had finished
25 reading the exhibit, I regret not having done so.

1 I would like to request the prosecution to
2 produce the official record of Litvinov's diary for
3 August 10, 1938. I have been given excerpts from this
4 but I would like it complete. I realize that they
5 probably cannot do it at this moment if they haven't
6 got it in Tokyo, but I want it some time before the
7 defense case is completed.

8 I made a request in the usual procedure directed
9 by the Court in chambers for the diary from July 1
10 through August 31. It was granted. I have received
11 parts of the diary but I haven't received any part of
12 the diary for this day except the few excerpts I
13 mentioned.

14 THE PRESIDENT: General Vasiliev.

15 GENERAL VASILIEV: If I understood it correctly -
16 I couldn't hear the full translation -- but I understood
17 the request is about the full diary, not about the
18 separate entries in that diary. I am sorry I did
19 not hear all what was said, and I ask Mr. Furness
20 to clear up for me whether the question is of the
21 full text of the diary or about the separate entries
22 from that diary.

23 MR. FURNESS: I would, of course, like the
24 full diary but what I am asking for now is the diary
25 of August 10.

1 THE PRESIDENT: You must say just what you
2 want. You cannot expect a man to produce the whole of
3 the diary. It may contain secret matters not relevant
4 to this case. For instance, you might ask for the full
5 diary entry on a certain day relating to these border
6 incidents, so far as they relate to conversations.

7 MR. FURNESS: Of course they may, your Honor,
8 contain secret matters wholly relevant to this case.

9 THE PRESIDENT: That is so. I did not exclude
10 those. I think you had better apply again in chambers
11 but tell me just what you want, Major Furness.

12 MR. FURNESS: Now I want the full diary for
13 August 10.

14 THE PRESIDENT: So far as it contains a record
15 of a conversation bearing on what matter and with whom?

16 We will recess for fifteen minutes.

17 (Whereupon, at 1045, a recess was
18 taken until 1100, after which the proceedings
19 were resumed as follows:)
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3 the diary. It may contain secret matters not relevant
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19 were resumed as follows:)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 GENERAL VASILIEV: May I explain the situation,
4 your Honor?

5 THE PRESIDENT: Yes, do so.

6 GENERAL VASILIEV: If it is all about the
7 entry in the diary of the tenth of August, I will
8 gladly submit it as soon as I receive it from Moscow
9 after my request. If that covers the matter, I have
10 nothing more to say. But if they want the full text
11 of the diary for some period, I fully agree with the
12 words that have been said by Mr. President, that it is
13 absolutely impossible.
14

15 All separate entries or particular entries
16 into the diary were submitted to the defense as soon as
17 they requested them, and they have these entries.

18 MR. FURNESS: It will be satisfactory if we
19 get the entry of the tenth, and I would like the entry
20 of the eleventh.

21 THE PRESIDENT: Tenth and eleventh of what
22 month and year?

23 MR. FURNESS: August, 1938.

24 In the meantime, I will have processed the
25 excerpts which I was furnished yesterday, and when I
get the full text I may find that the excerpts cover

1 everything that I want.

2 GENERAL VASILIEV: I will check this, and if
3 we have the record of the conversation of August 11,
4 we will gladly submit it, as we have submitted all
5 preceding entries. Up to now defense didn't ask about
6 this entry, about the submission of this entry.

7 THE PRESIDENT: Well, for the time being the
8 matter has been settled.

9 MR. FURNESS: If the Court please, the
10 prosecution has already introduced evidence regarding
11 the termination of hostilities, exhibit 273, prosecution
12 document 623. This part of the exhibit was not read,
13 and I propose to read it now. I shall read--

14 THE MONITOR: Mr. Furness, the portion you
15 intend to read, that is, the Japan-Soviet Incident,
16 does not have the Japanese translation and only the
17 part which prosecution read into the record is in
18 Japanese. So we may have to give you this -- we have
19 to give this to you in relay. And as to the accuracy
20 of the translation, we cannot give you the full
21 assurance of it.

22 THE PRESIDENT: How much of it is there?

23 MR. FURNESS: It is about a third of a page,
24 if your Honor please, short-type paper, not legal type.

25 THE PRESIDENT: Go ahead.

1 MR. FURNESS: But the arrangement with the
2 Language Section is satisfactory to me. I assumed
3 the prosecution had it all translated.

4 "The Japan-Soviet Incident.

5 "(1) The Information Department of the
6 Foreign Ministry on the 10th August, Showa 13 (1938)
7 at 10 p.m. published the following statement about the
8 agreement reached between Japan and Soviet Russia on
9 the termination of hostilities.

10 "As the result of a conference between
11 Litvinov, Soviet Chief Commissioner of Foreign
12 Affairs, and Ambassador SHIGEMITSU, on the night of
13 August 10th, an agreement has been reached on the
14 following items:

15 "A. Both sides shall stop military opera-
16 tions at noon (the maritime province hour) on the
17 11th.

18 "B. Both Japanese and Soviet troops should
19 maintain the line as of twelve o'clock a.m. (the
20 maritime province hour) on the 11th.

21 "It has been decided that the practical
22 measures to fulfill the agreement shall be conferred
23 between the representatives of both troops.

24 "C. According to the announcement of the
25 War Ministry at 1800 on the 11th, tranquility reigns

1 over the districts near Changkufeng since the morning
2 of the 11th."

3 I offer in evidence defense document No. 1565,
4 a telegram from the American charge d'affaires to the
5 secretary of state, in which he quotes an official
6 communique of the Soviet Government to the effect that
7 as a result of the agreement of August 10, hostilities
8 in the Lake Khasan zone ceased on August 11.

9 THE PRESIDENT: Admitted on the usual terms.

10 CLERK OF THE COURT: Defense document 1565
11 will receive exhibit No. 2640.

12 (Whereupon, the document above
13 referred to was marked defense exhibit
14 No. 2640 and received in evidence.)

15 MR. FURNESS: (Reading) "August 12, 1938.

16 "Tass communique issued last night states
17 that as agreed between the Soviet Union and Japan on
18 August 10 hostilities in the zone of Lake Khasan ceased
19 on August 11 at 13:30 local time. The first meeting
20 of military representatives of both sides for the
21 purpose of fixation of the position of troops took
22 place south of Height Ozernaya (Changkufeng) on the
23 evening of August 11. The next meeting is scheduled
24 for 12 noon August 12."
25

1 I offer in evidence defense document No. 1566,
2 a telegram from the American Charge d'Affaires reporting
3 an official communique, dated August 18, 1938, shows
4 that the truce was in effect, that the troops on both
5 sides had withdrawn.

6 THE PRESIDENT: General Vasiliev.

7 GENERAL VASILIEV: Your Honor, I think the
8 document is repetitious and it unnecessarily burdens the
9 record. The truce was signed, the conditions were de-
10 clared, and the hostilities ceased. All these we have
11 already had, and all the rest has no relevance to the
12 issues of the case.

13 THE RUSSIAN MONITOR: Correction: All documents
14 relating to these matters we already had.

15 THE PRESIDENT: Well, there is an addition here
16 about some further agreement.

17 MR. FURNESS: It also shows the withdrawal of
18 troops of both sides some distance from each other, and
19 the matter was turned over to diplomatic conversation.

20 THE PRESIDENT: The objection is overruled
21 and the document admitted on the usual terms.

22 CLERK OF THE COURT: Defense document 1566
23 will receive exhibit No. 2641.

24 (Whereupon, the document above re-
25 ferred to was marked defense exhibit No. 2641

and received in evidence.)

1 MR. FURNESS: I will read 2641.

2 "August 18, 1938.

3 "Tass report published in Soviet press today
4 stated that the Counselor of the Japanese Embassy in
5 Moscow has informed the People's Commissariat for Foreign
6 Affairs that the agreement for a truce in the region of
7 Lake Khasan has been put into effect and that the forces
8 of both sides at the present time are at some distance
9 from each other. The communique adds that, in view of
10 the foregoing, the Japanese Embassy had proposed that
11 should further questions arise which require meetings
12 between the representatives of the Japanese and Soviet
13 military commands, such meetings should be arranged
14 through diplomatic conversations between Moscow and Tokyo
15 and that the Counselor of the Japanese Embassy was in-
16 formed that this proposal was acceptable."

17 I call as the next witness MIURA Kazuichi.
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and received in evidence.)

1 MR. FURNESS: I will read 2641.

2 "August 18, 1938.

3 "Tass report published in Soviet press today
4 stated that the Counselor of the Japanese Embassy in
5 Moscow has informed the People's Commissariat for Foreign
6 Affairs that the agreement for a truce in the region of
7 Lake Khasan has been put into effect and that the forces
8 of both sides at the present time are at some distance
9 from each other. The communique adds that, in view of
10 the foregoing, the Japanese Embassy had proposed that
11 should further questions arise which require meetings
12 between the representatives of the Japanese and Soviet
13 military commands, such meetings should be arranged
14 through diplomatic conversations between Moscow and Tokyo
15 and that the Counselor of the Japanese Embassy was in-
16 formed that this proposal was acceptable."

17 I call as the next witness MIURA Kazuichi.
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1 K A Z U I C H I M I U R A, called as a witness on
2 behalf of the defense, being first duly sworn,
3 testified through Japanese interpreters as
4 follows:

5 DIRECT EXAMINATION

6 BY MR. FURNESS:

7 Q What is your name?

8 A MIURA Kazuichi.

9 Q What is your occupation?

10 A I am one member of the Japanese defense counsel
11 in this Tribunal.

12 Q You are associate counsel for defendant Mamoru
13 SHIGEMITSU?

14 A Yes.

15 MR. FURNESS: May the witness be shown defense
16 document 1584.

17 (Whereupon, a document was handed to
18 the witness.)

19 Q Is that your affidavit?

20 A Yes.

21 Q Are the facts stated therein true and correct?

22 A They are true and correct.

23 Q Did you sign and swear to it?

24 A Yes.

25 MR. FURNESS: I offer in evidence defense

MIURA

DIRECT

1 document No. 1584.

2 THE PRESIDENT: General Vasiliev.

3 GENERAL VASILIEV: Your Honor, I object to the
4 introduction of this affidavit. The evidence of this
5 witness as given in his affidavit is either immaterial
6 or is in contradiction with the rules of procedure estab-
7 lished in this Tribunal.

8 First, Mr. MIURA didn't witness the beginning
9 of the Khasan Lake events. Therefore, in this principal
10 matter he can render no assistance to the Tribunal, and
11 various stories in retelling the events would only pro-
12 duce confusion. He testifies to certain facts which
13 the witness, in his submission, saw and heard person-
14 ally. But these are facts of secondary importance rela-
15 ting to the course of military preparations which are
16 not important in connection with the issues involved in
17 this case. These are paragraphs 6, 9 and 11 of his
18 affidavit.

19 Three, he testifies about his conversations with
20 some unimportant persons such as the police officer,
21 some petty officer, et cetera. These talks as to their
22 contents are of no interest. Paragraphs 4, 5, 7, 10.

23 If at the time the witness made a report on
24 his trip, then we would like to see his report and there
25 will be no need in his testimony here. Paragraph 8.

MIURA

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15 ting to the course of military preparations which are
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17 this case. These are paragraphs 6, 9 and 11 of his
18 affidavit.

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20 some unimportant persons such as the police officer,
21 some petty officer, et cetera. These talks as to their
22 contents are of no interest. Paragraphs 4, 5, 7, 10.

23 If at the time the witness made a report on
24 his trip, then we would like to see his report and there
25 will be no need in his testimony here. Paragraph 8.

MIURA

DIRECT

1 Five, the witness produces some draft papers
2 which he allegedly had been keeping from the time of
3 his trip. We have no trust in these papers. They
4 can't serve as evidence. According to general rules
5 all such matters, if they really existed, must be sub-
6 mitted, together with the report, but are not kept in
7 the pockets. These rules are general for the whole
8 world.

9 Last, I do not know what juridical importance
10 the Tribunal will give to the fact that this witness
11 is assistant defense counsel in this case for the
12 defendant SHIGEMITSU, but I think that this only gives
13 additional ground to my objection.

14 I ask the honorable Tribunal to reject the
15 affidavit.
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1 MR. FURNESS: If the Court please, this
2 affidavit is the sworn record of the man who made a
3 trip to the vicinity where the incident took place
4 prior to the hostilities, and remained there during
5 them until the truce was signed. He is an eye-
6 witness who saw the trenches, which will appear in
7 paragraph 6, which the Soviet prosecutor just
8 mentioned. He made the investigation on the spot,
9 he tells the persons with whom he talked, it is evi-
10 dent what is hearsay and he has concealed nothing
11 with regard to that. The original draft of the
12 telegram which he mentions is attached to the
13 original affidavit which is in the clerk's hands,
14 if the Tribunal would like to look at it. The fact
15 that he is counsel for SHIGEMITSU is what he is doing
16 now. That doesn't detract from the fact that he,
17 MIURA, made this trip in 1938. He is the only
18 person that can testify firsthand to that trip.

19 THE PRESIDENT: Does he say what happened
20 to his report?

21 MR. FURNESS: I would like to ask him a
22 question on that. I think what he means merely that
23 he was filing telegrams to Tokyo.

24 THE PRESIDENT: He says he filed a report
25 which clearly means he wrote a document, being a

MIURA

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1 report. I understood General Vasiliev was not ob-
2 jecting to that report if it was available.

3 GENERAL VASILIEV: That is quite correct,
4 your Honor.

5 MR. FURNESS: I think I know what he means,
6 but I don't think I should state it in argument. The
7 fact that he made the report is evidenced by a report
8 in 1938 which is in the files of the Foreign Office
9 which I intend to submit to the Tribunal. But I am
10 not sure that the Tribunal will admit it in evidence.
11 It is not his report, but it is based on many reports
12 which constitute an investigation of which his was
13 one of the sources.

14 THE PRESIDENT: If he merely produced a
15 report, which he made at that time, and about which
16 there is no question, then his position as counsel
17 would hardly be a consideration. We would like to
18 hear what he has to say but we want to confine him
19 to things he saw on the spot and that he wrote. We
20 think that the affidavit is far from being satisfactory.
21 We would prefer his report. Perhaps you better with-
22 hold this document until you make an effort to get
23 that report, Major Furness.

24 MR. FURNESS: May I ask him what he means by
25 that statement in paragraph 8?

MIURA

DIRECT

1 THE PRESIDENT: Well, read paragraph 8 to
2 him and ask him what he means. We haven't admitted
3 it yet, of course. But these preliminary explana-
4 tions are resorted to before documents are admitted
5 occasionally.

6 MR. FURNESS: I didn't hear that.

7 THE PRESIDENT: Did you make a written
8 report on this, witness?

9 THE WITNESS: No, I did not write a report.

10 THE PRESIDENT: Do you mean to say you
11 went on such an important mission without putting
12 down in writing what occurred?

13 THE WITNESS: Yes, that I passed on to Tokyo
14 by telegram.

15 THE PRESIDENT: Why do you say you filed
16 a report?

17 THE INTERPRETER: Mr. President, the
18 English text says, "Filed my report," but the
19 Japanese, if translated as written in Japanese, it
20 is "Prepare a report."

21 THE PRESIDENT: That is no different.

22 THE WITNESS: May I have that affidavit
23 shown to me again?

24 (Whereupon, a document was handed to the
25 witness.)

MIURA

DIRECT

1 THE WITNESS: This means that I have filed
2 a telegram to Tokyo in the Foreign Office. In send-
3 ing a telegram the word "report" may be used.

4 THE PRESIDENT: Where is the telegram? You
5 would not object to the telegram, General Vasiliev,
6 I take it. Reports are frequently by telegram.

7 GENERAL VASILIEV: No, I will not object
8 to the telegram.

9 MR. FURNESS: Your Honor, ---

10 THE PRESIDENT: Just a second, I can not
11 listen to you and ---

12 MR. FURNESS: I beg your pardon.

13 THE PRESIDENT: Yes.

14 MR. FURNESS: Your Honor please, we, of
15 course, are not trying to prove the contents of any
16 document by that statement in this affidavit.

17 THE PRESIDENT: Will you repeat what you
18 said there, Major Furness, please?

19 MR. FURNESS: What I said was, sir, that
20 we were not trying to prove the contents of any
21 document by that statement in this affidavit.

22 THE PRESIDENT: No, that rule isn't
23 infringed, but the Russian prosecutor is prepared to
24 admit the telegram and that is the thing we would
25 like to see because that was written at the time. We

MIURA

DIRECT

1 would not have to depend on his recollection over
2 nine years, if we have that.

3 MR. FURNESS: I will be glad to have the
4 witness asked the question about it. We have in-
5 troduced evidence in the past few days with regard
6 to telegrams and messages in the Foreign Office.

7 THE PRESIDENT: Well, get him to clear
8 that up.

9 The telegram which you say was your report
10 is not that referred to in paragraph 4, is it?

11 GENERAL VASILIEV: I think the defense
12 conducting the examination should have asked this
13 question first of all, and not about how he passed
14 his time, what time he got up and what time he went
15 to bed.

16 THE PRESIDENT: Well, I am asking the question,
17 General, you can not object to that.

18 GENERAL VASILIEV: I didn't want to object
19 to your question, your Honor. If you understood it
20 in such way, I beg your pardon, sir.

21 THE WITNESS: Mr. President, you referred to
22 a report or telegram in paragraph 4, but I cannot
23 locate that word in the Japanese text. That is the
24 word "report."

25 THE PRESIDENT: In paragraph 4, you said you

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1 would not have to depend on his recollection over
2 nine years, if we have that.

3 MR. FURNESS: I will be glad to have the
4 witness asked the question about it. We have in-
5 troduced evidence in the past few days with regard
6 to telegrams and messages in the Foreign Office.

7 THE PRESIDENT: Well, get him to clear
8 that up.

9 The telegram which you say was your report
10 is not that referred to in paragraph 4, is it?

11 GENERAL VASILIEV: I think the defense
12 conducting the examination should have asked this
13 question first of all, and not about how he passed
14 his time, what time he got up and what time he went
15 to bed.

16 THE PRESIDENT: Well I am asking the question,
17 General, you can not object to that.

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19 to your question, your Honor. If you understood it
20 in such way, I beg your pardon, sir.

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22 a report or telegram in paragraph 4, but I cannot
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16 General, you can not object to that.

17 GENERAL VASILIEV: I didn't want to object
18 to your question, your Honor. If you understood it
19 in such way, I beg your pardon, sir.

20 A Mr. President, you referred to a report or
21 telegram in paragraph 4, but I cannot locate that
22 word in the Japanese text. That is the word "report".

23 THE PRESIDENT: In paragraph 4, you said you
24 drafted a telegram in the name of the vice consul at
25 Hunchun to the foreign minister in Tokyo. In

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22,887-1
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1 drafted a telegram in the name of the Vice-Consul at
2 Hunchun to the Foreign Minister in Tokyo. In
3 paragraph 8 you refer to your report which you say
4 now was a telegram. The telegram in paragraph 4
5 was not your report. It was something you wrote for
6 the Vice Consul. Can you clear that up?

7 THE WITNESS: Inasmuch as I was on a
8 temporary trip, I had no authority to send telegrams
9 in my name from a place where there was a Consulate
10 or Consular General.

11 THE PRESIDENT: But you filed your report
12 to Tokyo from where? From Hunchun?

13 THE WITNESS: Yes, from Hunchun.

14 THE PRESIDENT: And that report is identical
15 with the telegram you sent in the name of the Vice-
16 Consul, is that so?

17 THE WITNESS: Yes, whenever any telegrams
18 were filed from Hunchun it was filed in the name of
19 the Vice Consul there -- the head of the Consulate
20 there.

21 THE PRESIDENT: Are you prepared to admit --
22 are you prepared not to object to that telegram,
23 General?

24 GENERAL VASILIEV: If that copy will have
25 certificate, due certificate, I will not object to it,

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2 Hunchun to the foreign minister in Tokyo. In
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20 there.

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22 are you prepared not to object to that telegram,
23 General?

24 GENERAL VASILIEV: If that copy will have
25 certificate, due certificate, I will not object to it,

1 but if it is only a draft copy which perchance was
2 kept by the witness, I object to it most positively.

3 THE PRESIDENT: Well, the original telegram
4 would hardly be obtainable after so many years.

5 GENERAL VASILIV: But I greatly doubt the
6 authenticity of this document, your Honor.

7 THE PRESIDENT: I do not think that you know
8 just what the witness means either, Major Furness,
9 I think you had better withhold this, withdraw this
10 until you make sure of the facts the witness can
11 depose to. We are not yet clear whether he said
12 that the report in paragraph 8, being a telegram,
13 is identical with the telegram in paragraph 4.

14 MR. FURNESS: Might I request your Honor
15 to look at the dates mentioned in paragraph 4 and the
16 date mentioned in paragraph 8. I said "dates" in
17 paragraph 4, I mean date.

18 THE PRESIDENT: Yes, 24th July.

19 MR. FURNESS: Now, could you look at ---

20 THE PRESIDENT: But let him clear that up.
21 Did he send two telegrams, the one referred to in
22 paragraph 4 and the report referred to in paragraph 8,
23 or did he send only one telegram?

24 Witness, what is the answer?

25 THE WITNESS: I filed telegrams frequently.

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22 paragraph 4 and the report referred to in paragraph 8,
23 or did he send only one telegram?

24 Witness, what is the answer?

25 THE WITNESS: I filed telegrams frequently.

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1 THE PRESIDENT: That is not what I asked you.
2 Answer this plain question, if it can be
3 translated into Japanese.

4 If that is a translation of what I said
5 it must be ten times as long.

6 MR. FURNESS: The witness speaks English,
7 Japanese, Russian and several other languages, your
8 Honor.

9 THE PRESIDENT: Witness, answer me in
10 English.

11 Is the report referred to in paragraph 8,
12 which you say was a telegram, the same as the tele-
13 gram referred to in paragraph 4?

14 THE WITNESS: They are different, sir.

15 THE PRESIDENT: Well, we want both of them.
16 We have what you say is a copy of one. We want both
17 telegrams, or copies thereof. Why cannot you get both?

18 THE WITNESS: It happened that a draft of the
19 telegram prepared after my conversation with TERAO
20 MITSURU was in my possession.

21 THE PRESIDENT: Is there any record of the
22 telegram, which you say was your report kept anywhere?
23 Obviously it should be in the Foreign Office, if not
24 destroyed.

25 MR. FURNESS: If not destroyed by fire and

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1 borbing, it ---

2 THE PRESIDENT: You do not think I meant
3 anything else. You are rather sharp on this occasion.
4 I have not suggested any malpractice on the part of
5 anybody in this matter.

6 MR. FURNESS: Thank you, your Honor.

7 THE PRESIDENT: There should be no need for
8 me to have to make that statement.

9 MR. FURNESS: I am glad to say there is no
10 need, sir.

11 THE PRESIDENT: What have you to say,
12 witness?

13 THE WITNESS: With the exception of the
14 draft which accidentally happened to be in my
15 possession, the others should be in the Foreign
16 Office, as the President has stated.

17 THE PRESIDENT: Did you make any effort to
18 get it from the Foreign Office? You know you are a
19 lawyer in this case, you know what we would expect.

20 THE WITNESS: Yes, I have tried.

21 THE PRESIDENT: With what result?

22 THE WITNESS: The result was I was unable
23 to obtain them.

24 THE PRESIDENT: Was any reason given?

25 THE WITNESS: I was told that this was due

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3 anything else. You are rather sharp on this occasion.
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23 to obtain them.

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25 THE WITNESS: I was told that this was due

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1 to the burning of the Foreign Office. The fire which
2 burned down the Foreign Office.

3 THE PRESIDENT: We will adjourn until half
4 past one.

5 (Whereupon, at 1200, a recess was taken.)
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AFTERNOON SESSION

1
2 The Tribunal met, pursuant to recess,
3 at 1330, Hon. Erima Harvey Northcroft, Member
4 from the Dominion of New Zealand and Hon. Ju-
5 Ao Mei, Member from the Republic of China not
6 sitting.
7

8 MARSHAL OF THE COURT: The International
9 Military Tribunal for the Far East is now resumed.
10

11 K A Z U I C H I M I U R A, called as a
12 witness on behalf of the defense, re-
13 sumed the stand and testified through
14 Japanese interpreters as follows:

15 THE PRESIDENT: Major Furness.

16 MR. FURNESS: I can't remember, your Honor,
17 whether you had some question which you had put to
18 the witness which remained unanswered.

19 THE PRESIDENT: He had answered all my
20 questions before the adjournment. I have no further
21 questions for the time being.

22 MR. FURNESS: I tendered the affidavit; I
23 don't think it has been accepted.

24 THE PRESIDENT: By a majority the Court
25 overrules the objection and admits the document.

CLERK OF THE COURT: Defense document
1584 will receive exhibit No. 2642.

(Whereupon, the document above
referred to was marked defense exhibit
No. 2642 and received in evidence.)

MR. FURNESSE: I shall read exhibit 2642,
omitting the formal part.

"2. In July 1938, I was Chief of the
3rd section of the Research Bureau of the Japanese
Foreign Ministry. On 21 July 1938 I was told by Mr.
K. INOUE, Director of the Euro-Asiatic Bureau of the
Foreign Office, that the Foreign Office desired to
have a firsthand picture of the situation in the
Changkugeng area and that I was to go to that area
for that purpose. It had been reported to the Foreign
Office that the top of the hill by that name had been
occupied by Soviet troops on 11 July, 1938.

"3. I left Tokyo on 22 July 1938 by air
and arrived on 23 July 1938 at Hunchun, a town in the
southeast corner of Manchoukuo, where the Japanese
consulate nearest to Changkufeng was located. From
there I went to Keiko, a town at the northeastern
tip Korea, to obtain information from General KITANO,
Chief of Staff, and other staff officers of the
Korean army who were in that town. From then until

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1 the truce on 11 August I spent most of my time in
2 Keiko or Hunchun obtaining information at the former
3 and making reports by telegram to the Foreign Office
4 from the consulate in Hunchun.

5 "4. On 24 July 1938 I had a conversation
6 with Terao MIT-URU, formerly an officer of the
7 consular police, then employed by the consulate at
8 Hunchun as an investigator. As a result of this
9 conversation I drafted a telegram in the name of
10 KATAGIRI, Vice-Consul at Hunchun, to General UGAKI,
11 Foreign Minister in Tokyo, and it was forwarded in
12 his name. Although the Foreign Office index shows
13 that telegrams were received at the Foreign Office
14 from the consulate at Hunchun on that day and on the
15 following days, such telegrams cannot be found and
16 this telegram cannot be identified from this list.
17 I, however, retained in my own possession the draft
18 of that telegram which I made in my own handwriting,
19 and this draft is attached to this affidavit as
20 exhibit 'A'. It accurately reports what was told
21 me by Terao. Vice-Consul KATAGIRI has died.

22 "5. On 28 July I made a trip from Hunchun
23 to Kogi Station in Korea. There I interviewed sub-
24 officer Yokochi, Commander of the cavalry detachment
25 of the Korean Army at Sozan on the Korean bank of the

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1 River Tumen from where I could see the Hill
2 Changkufeng. I saw Soviet troops on the western
3 slope of that hill (on Manchoukuan territory even
4 under the map tendered by the prosecution) below the
5 summit, digging trenches and driving pikes, and a
6 red flag flying near the top of the hill. I saw
7 no Japanese or Manchoukuan troops on territory claimed
8 by the Soviet under the map tendered by the prosecution
9 and no provocative actions on their part.

10 "7. I returned to Hunchun that night and
11 since the situation seemed to be becoming more
12 tranquil, I drove next day, 29 July 1938, to Tung-
13 hsiengchen, a small town on the eastern border of
14 Manchuria. I stayed there that night and was told
15 during the evening by the chief of the border police
16 that a clash occurred that day near Changkufeng.

17 "8. I returned to Keiko next day, 30 July
18 1938, and remained there until 1 August 1938, on which
19 day I returned to Hunchun in order to file my report
20 to Tokyo.

21 "9. On 1 August 1938 when I was in Keiko
22 I saw a fierce bombardment of Suilungfeng Hill by
23 Soviet artillery. Between 2 August and 9 August
24 1938, while I was at Keiko and while I was driving
25 between Keiko and Hunchun I saw Soviet airplanes

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1 dropping bombs on Keiko and other points well within
2 Manchoukuoan territory, even under the Soviet con-
3 tention.

4 "10. Some time during the first 10 days of
5 August I had a conversation with Major SAITO, Staff
6 Officer of the Korean Army at Keiko. With his own
7 hand he drew a sketch map of the Changkufeng area
8 which he said showed the positions of Russian and
9 Japanese troops on 11 July and 29 July 1938 and the
10 places where the clashes took place on the latter
11 date. I have retained this map, and the original is
12 attached to this affidavit as exhibit 'B'.

13 "11. Acting under orders received from the
14 Foreign Office to make an investigation along the
15 Soviet-Manchoukuoan border districts, I left Hunchun
16 on 12 August 1938, after the agreement ending the
17 incident was concluded, and visited several places
18 along the eastern border where Manchoukuoan border
19 guards or Japanese garrisons were stationed, then down
20 the Ussuri River, the Kazakeivitch Passage, thence
21 up the Amur River (both of these rivers forming the
22 border between Manchoukuo and the Soviet Union),
23 thence from the confluence of the Amur and Sungari
24 Rivers as far as Fuchin, and returned to Tokyo by
25 land, sea and air on 15 September 1938. All along

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1 my route in the border districts and along the
2 international rivers it was completely tranquil
3 and I observed no tension, although the trip was
4 made directly after the Changkufeng Incident."

5 I will read exhibit 'A' attached to that
6 exhibit.

7 "To Foreign Minister UGAKI

8 "From Vice-Consul KITAGIRI

9 "1. The following is the report of TERA0
10 who returned on the night of the 24th from Keiko which
11 is on the opposite side of Changkufeng:

12 "(1) As far as it was possible to see from
13 Sozan (Korea), the Soviet side set barbed wire along
14 a line down from the summit of Changkufeng and clearly
15 within Manchoukuoan territory (it was measured with
16 the eye that about 20-30 meters were encroached upon).
17 TERA0 did not observe it from Fangchuan-hsieng, at
18 the foot of the hill, when he went there on the 18th,
19 but he saw it on the 20th from Sozan. Besides, looking
20 towards Changkufeng from the Kojo area, he saw that
21 the Soviet side had dug trenches and manned them
22 (a) inside the barbed wire on the left hand side,
23 (b) in front of the barbed wire (the work was begun
24 on the 20th) to the left of the former, and (c) inside
25 the barbed wire to the right hand side as seen from

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1 Sozan. More than that, (d) he saw with his own eyes
2 Soviet troops moving about on the top of the hill,
3 where a position has been built and comouflaged with
4 grass and trees.

5 "(2) According to answers to interrogatories
6 addressed to Sergeant ITO and four others who accompanied
7 Corporal MATSUSHIMA, the corporal is reported by them
8 to have been shot without warning while definitely
9 within the territory of Manchoukuo, about 100 yards
10 from the summit about one kilometer east of the village
11 of Fangchuan-hsieng in the middle of the southeastern
12 slope of Changkufeng by Soviet troops who lay in
13 ambush around the summit."

14 BY MR. FURNESS (Continued):

15 Q Mr. MIURA, are you familiar with the Russian
16 language?

17 A Yes.

18 Q Can you tell me how much a Russian lea is
19 in kilometers?

20 A Slightly over one kilometer.

21 Q Can you tell me what the word "Bezuimennaya"
22 means in Russian?

23 A It means unknown, and I think it refers to
24 a mountain.

25 Q When it refers to a mountain what does it

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mean?

1 A The word "mountain" or "hill" is not indicated
2 there, but that is presumed by the ending.

3 Q Now, referring to exhibit "B".
4

5 MR. FURNES: May the witness be shown the
6 affidavit?

7 (Whereupon, the document above
8 referred to was handed to the witness.)

9 Q Were the parts of that in script -- "Shatsao-
10 feng 29 July from 11 July" -- was that written by
11 Staff Officer SAITO?

12 A No.

13 Q Who did write it?

14 A I wrote them.

15 Q Why did you write it?

16 A As explanation.

17 Q Was that for my benefit?

18 A Yes.

19 Q Now, referring to the sign to the left of
20 what appears to be a lake and to the right of the
21 bulking line of what appears to be a summit. Did
22 Staff Officer SAITO tell you what that meant?

23 A Yes, I think he did explain.

24 Q What did he say?

25 A I do not remember all that he did -- all that

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mean?

1 A The word "mountain" or "hill" is not indicated
2 there, but that is presumed by the ending.

3 Q Now, referring to exhibit "B".

4 MR. FURNES: May the witness be shown the
5 affidavit?
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7 (Whereupon, the document above
8 referred to was handed to the witness.)

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10 feng 29 July from 11 July" -- was that written by
11 Staff Officer SAITO?

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17 Q Was that for my benefit?

18 A Yes.

19 Q Now, referring to the sign to the left of
20 what appears to be a lake and to the right of the
21 bulking line of what appears to be a summit. Did
22 Staff Officer SAITO tell you what that meant?

23 A Yes, I think he did explain.

24 Q What did he say?

25 A I do not remember all that he did -- all that

he said.

1 Q Did he tell you what that sign meant?

2 A I think he did, but I do not remember
3 how he explained them.

4 Q Did he tell you what the signs, the solid
5 lines to the left of the bulking line meant?

6 A I think he explained these lines as being --
7 as indicating Soviet trenches or positions.

8 Q And did he tell you what the crosses meant?

9 A I do not recall.

10 MR. FURNESS: No further questions on
11 direct, your Honor.

12 THE PRESIDENT: General Vasiliev.

13 GENERAL VASILIEV: With all respect to the
14 Honorable Tribunal, I must state that we are of the
15 same opinion about the value of the evidence given
16 by this witness and we refuse to cross-examine him.

17 THE PRESIDENT: Well now, do not assume
18 you know just what the Tribunal thinks about that
19 evidence. I made certain comments at the time the
20 evidence was tendered, but I did not on that occasion
21 speak for every judge. Do not let the attitude of
22 the Court influence you in determining whether to
23 cross-examine or not, General.

24 GENERAL VASILIEV: I confine myself to the
25

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1 relevant questions that the Tribunal draws our
2 attention to, exhibits beginning from 753 and ending
3 with 759.

4 BY THE PRESIDENT:

5 Q Witness, can you tell us something more
6 about Terao Mitsuru? Who was he? You say he was
7 an officer of the consular police. What was his
8 rank?

9 A He was a member of the Consulate who was
10 employed for the purpose of collecting intelligence
11 data.

12 Q Was he a non-commissioned officer?

13 A A police officer.

14 Q Was he the head of the force or just a
15 member of it?

16 A Just a member of the force.

17 MR. FURNESS: May the witness be excused
18 on the usual terms?

19 THE PRESIDENT: He is excused accordingly.

20 (Whereupon, the witness was excused.)
21
22
23
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25

1 MR. FURNESS: I next offer in evidence
2 defense document 1503, another record from the
3 diary of Litvinov of a conversation between him
4 and Japanese ambassador on 21 August 1938.

5 It is offered to prove that the proposal
6 for the boundary redemarcation was made by the
7 Japanese side. It also indicates that Corporal
8 MATSUSHIMA mentioned as early as the first con-
9 ference on 20 July 1938 had, in fact, been killed
10 since they discussed the delivery of his body.

11 THE PRESIDENT: Admitted on the usual
12 terms.

13 CLERK OF THE COURT: Defense document
14 1503 will receive exhibit No. 2643.

15 (Whereupon, the document above referred
16 to was marked defense exhibit 2643 and re-
17 ceived in evidence.)

18 MR. FURNESS: I will read parts of exhibit
19 2643.

20 "SHIGEMITSU began the conversation with
21 an explanation of the Japanese proposal concerning
22 the creation of a Commission for Boundary Redemarca-
23 tion. SHIGEMITSU stated that in the next-to-last
24 conversation with me /the conversation of 10 August/
25 he had been able to acquaint himself with the Soviet

1 arguments and convinced himself that the points of
2 view of the two sides on the question of creating a
3 commission for the delimitation of the boundary had
4 been largely reconciled. He has just received in-
5 structions from the Japanese government which are
6 based on a desire to regulate Japanese-Soviet rela-
7 tions by friendly means. The concrete proposal of
8 the Japanese government on the organization of a
9 boundary commission takes into consideration the
10 Soviet point of view.

11 "Thereupon SHIGEMITSU transmitted the
12 Japanese proposal, the text of which is attached
13 hereto."

14 Skipping to the second page, beginning at
15 the next to the last paragraph:

16 "After this I told SHIGEMITSU as follows:

17 "First and foremost I welcome the statement
18 of the ambassador that his government is striving
19 to restore friendly relations. Turning to the con-
20 crete proposal made by the ambassador, I wish to
21 state that there are therein many points of a tech-
22 nical nature upon which I cannot now give an answer."

23 Skipping to the beginning of the next para-
24 graph:

25 "I consider the first point of the proposal

1 as settled, but there is another important question
2 which I should like to make more definite. Last time
3 I told the ambassador that a commission for redemarca-
4 tion would be acceptable to us only on the condition
5 that only official documents, drawn up and signed
6 by representatives of Russia and China, be taken as
7 the basis of its work. I refused to take as a basis
8 the other material mentioned, about which we are
9 ignorant. I must make the same objection now. The
10 commission ought to know what basis it is working
11 on and by which /basis/ it is guided. We say that
12 it is necessary to be guided by agreements and maps,
13 drawn up and signed between Russia and China. But
14 the ambassador proposes other material. We cannot
15 agree to this. Only when the commission has gathered
16 and material has been presented to it will it be
17 able to say whether we can use this material, and
18 until then we cannot give our consent.

19 "My formula is as follows: 'As a basis of
20 the work of the commission for redemarcation shall
21 be adduced agreements and maps, drawn up and signed
22 by representatives of Russia and China'

23 "SHIGEMITSU said that he should like to
24 add 'and other material.'

25 "I told SHIGEMITSU that I could not accept

1 this. I cannot admit other material when I do not
2 know it. SHIGEMITSU stated that he did not object
3 to the commission taking into consideration agree-
4 ments and maps according to their value. He did not
5 doubt that agreements and maps drawn up by the Soviet
6 side would be valuable material, but that it was
7 necessary that the commission consider in addition
8 to them other material from the point of view of the
9 value which they can offer.

10 "I repeated that the material about which
11 the ambassador was speaking was unknown to me. When
12 it was presented to the commission, the commission
13 would decide whether we could use it, and until that
14 time we could not give approval to this.

15 "SHIGEMITSU said that to avoid discussion
16 he would like to recapitulate what I had told him.
17 He understood me to mean that the Hunch'un Agree-
18 ment with attached protocols and maps would be
19 material for the work of the commission. As for
20 other material which would be offered, it could be
21 considered within the committee, at which /time/
22 after becoming acquainted with it each side would ask
23 for instructions from its government. In that way,
24 SHIGEMITSU concluded, there is a great divergence
25 between the points of view of the two countries.

1 For that reason he could not decide that question
2 immediately but would have to consider it and give
3 an answer thereafter.

4 "I told SHIGEMITSU that the precise for-
5 mula which I proposed was as follows: 'As a basis
6 for the work of the committee for redemarcation
7 shall be adduced the Hunch'un Agreement with attached
8 maps, and also other agreements and maps signed by
9 representatives of Russia and China.'

10 "SHIGEMITSU asked what would happen to
11 other material that was presented to the commission.
12 I said that only those agreements which had been
13 drawn up and signed by representatives of Russia and
14 China could be adduced as a basis. If even so the
15 Japanese side should offer any new material, it
16 would rest with our side whether to accept this
17 material or not. I declare in advance that if this
18 material does not carry the signatures of China and
19 Russia, we will not accept it.
20

21 "SHIGEMITSU stated that in this way it would
22 result that if this material was offered to the
23 commission, the commission would not be in a posi-
24 tion to consider it.

25 "I said: 'Yes, if there were no signatures
of Russia and China on it.'

1 For that reason he could not decide that question
2 immediately but would have to consider it and give
3 an answer thereafter.

4 "I told SHIGEMITSU that the precise for-
5 mula which I proposed was as follows: 'As a basis
6 for the work of the committee for redemarcation
7 shall be adduced the Hunch'un Agreement with attached
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9 representatives of Russia and China.'

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17 material or not. I declare in advance that if this
18 material does not carry the signatures of China and
19 Russia, we will not accept it.
20

21 "SHIGEMITSU stated that in this way it would
22 result that if this material was offered to the
23 commission, the commission would not be in a posi-
24 tion to consider it.

25 "I said: 'Yes, if there were no signatures
of Russia and China on it.'

1 "SHIGEMITSU stated that it would be necessary
2 to take into consideration other material if only
3 because the agreement only established a boundary
4 line, but where it actually ran, was unclear. For
5 example, did it run through the crest of a hill or
6 along its slopes? Without taking into considera-
7 tion other material, the work of the commission
8 would appear impossible."

9 Skipping to the top of next page:

10 "I told SHIGEMITSU that on the map attached
11 to the Hunch'un Agreement it was clearly shown where
12 the boundary ran -- on the crest or on the slopes.
13 I stressed that we were talking about a basis.
14 Where to place a stone the commission would decide,
15 but it ought to be based on the Hunch'un Agreement.

16 "SHIGEMITSU stated that he objected to
17 other documents not being mentioned in the formula.
18 This was creating the impression in Tokyo that the
19 Soviet side desired to limit itself to a discussion
20 of the agreement alone. In the formula offered by
21 you, SHIGEMITSU said, only agreements and maps are
22 mentioned.

23 "I again repeated to SHIGEMITSU that the
24 agreement and the maps should be the basis, but that
25 the commission had a right to discuss and examine

1 all the material which was offered to it. I
2 asked the ambassador to transmit my formula to his
3 government."

4 Skipping to the bottom of page 6:

5 "Then SHIGEMITSU turned to the question
6 of the surrender of the remaining 19 bodies, and
7 also the body of N.C.O. MATSUSHIMA, about which the
8 embassy advisor had already had conversations with
9 MIRONOV.

10 "SHIGEMITSU said that as a supplement to
11 the statements which NISHI had made he on his own
12 part would like to ask me to hasten the transfer of
13 these bodies.

14 "In addition he had a report that the body
15 of a dead Soviet aviator had been found near the
16 mouth of the TUMEN-ULA River. The Japanese side
17 wished to surrender this body to us. He asked that
18 I inform the local Soviet authorities about this."

19 The remainder deals with alleged border
20 violations on both sides, which I will not read,
21 because it is not at issue.

22 I offer in evidence defense document No.
23 1506, the Japanese proposals referred to in the docu-
24 ment which has just been tendered in evidence. I
25 shall read only Article 4, which was the basis of a

1 discussion in a document later to be introduced.

2 THE PRESIDENT: Admitted on the usual
3 terms.

4 CLERK OF THE COURT: Defense document 1506
5 will receive exhibit No. 2644.

6 (Whereupon, the document above refer-
7 red to was marked defense exhibit 2644 and
8 received in evidence.)

9 MR. FURNESS: (Reading) "The Hunch'un
10 Agreement with attached protocol and maps and also
11 other materials."

12 I now offer in evidence defense document
13 1507, which contains the Soviet amendments to the
14 Japanese proposals of 21 August 1938. I shall
15 read only Article A.4.

16 THE PRESIDENT: Admitted on the usual
17 terms.

18 CLERK OF THE COURT: Defense document
19 1507 will receive exhibit No. 2645.

20 (Whereupon, the document above refer-
21 red was marked defense exhibit 2645 and re-
22 ceived in evidence.)

23 MR. FURNESS: I next offer in evidence
24 defense document No. 1505, a record of a conference
25 on 31 August 1938 in Litvinov's Diary.

1 The translation was made at my request by
2 the Language Section of the prosecution.

3 THE PRESIDENT: Admitted on the usual
4 terms.

5 CLERK OF THE COURT: Defense document No.
6 1505 will receive exhibit No. 2646.

7 (Whereupon, the document above refer-
8 red to was marked defense exhibit 2646 and
9 received in evidence.)

10 MR. FURNESS: An excerpt from this record
11 in the Russian language was introduced into evidence
12 by the prosecution as exhibit 759. The translation
13 of the portion of this defense document 1505 covered
14 by exhibit 759, furnished us by the Language Section
15 of the Prosecution, and the translation of exhibit
16 759, furnished us when that exhibit was tendered in
17 evidence, differ in essential respects. I propose
18 to read short portions of this document not included
19 in exhibit 759 and the portion covered by exhibit
20 759, pointing out the differences of translation.

21 It is offered to prove that it was agreed
22 by Litvinov and SHIGEMITSU that the Boundary Com-
23 mission might consider all materials and would not
24 confine itself to the Hanchun Agreement and that it
25 does not say that the Japanese Government admitted that

1 their demands had no ground as alleged by the prose-
2 cution in tendering exhibit 759 (page 7824 of the
3 record).

4 THE PRESIDENT: It is admitted on the
5 usual terms.

6 MR. FURNESS: I think it has already been
7 given a number.

8 THE PRESIDENT: Proceed to read it.

9 MR. FURNESS: "Article 4."

10 THE MONITOR: Major Furness, will you kindly
11 let us know when you skip a passage or when you are
12 adding certain things? because it is not properly
13 marked, sir. Thank you.

14 MR. FURNESS: I gave it to your section to
15 mark yesterday.

16 THE MONITOR: Evidently it hasn't been marked,
17 sir. Sorry.

18 You gave it to us this morning; we didn't
19 get it yesterday.
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1 MR. TAVENNER: May it please the Tribunal,
2 counsel has pointed out that there might be a dis-
3 crepancy in the translation. If that be true the
4 proper way, I take it, to settle the matter, is to
5 transfer it, or rather refer it to the court officials.

6 MR. FURNESS: I would be glad to have that
7 done. I did take it to Commander Carr and I pointed
8 out the differences and asked him whether these dif-
9 ferences, or what the view of the Russian language
10 said, and he said "Yes, I noticed the differences
11 myself", and they are, in my opinion, the way I read.

12 THE PRESIDENT: We have no experts in the
13 Russian Language advising us. It is useless to refer
14 the matter to the present Language Division because
15 they do not include any Russian. You had better pro-
16 ceed and point out the differences, Major Furness, as
17 you proposed.

18 MR. FURNESS: I resume reading at the last
19 sentence of the third paragraph, the last sentence
20 of the third paragraph on page 1:

21 "I should like to have the Ambassador's
22 agreement to Article 4, since this point is the most
23 important and without agreement on this point all the
24 remaining points will be without significance."

25 Skipping now to page 2, the last two para-

6

graphs, commencing with "After that SHIGEMITSU":

"After that SHIGEMITSU made the following report regarding Article IV:

"Last time I told him that as a basis for the labors of the commission there should be taken all the treaties, agreements, and also protocols and maps signed by the representatives of China and Russia. As for other matter, it was as he, SHIGEMITSU, had understood me, other material might be submitted by both sides for examination by the commission. Regarding this, I told him last time that this was a matter of course and that it was not necessary to write it down in the protocol. He had transmitted to his government the point of view of the Soviet Government along with my explanations. Now he had an answer. The answer of the Japanese Government states that it is prepared to meet the Soviet proposal in Article 4. The Japanese Government gives its agreement on this point, appreciating my efforts and wishing to ameliorate the mutual relations of the two countries.

"In this connection SHIGEMITSU remarked that he was happy to accept my proposal, bearing in mind that both sides could submit to the commission the material which they might possess in order that the work of the commission might be more successful.

1 "I told SHIGEMITSU that, as I had explained
2 to him the last time, we could not settle in advance
3 what sort of material would be studied by the com-
4 mission, what sort of arguments would be advanced by
5 the commission, and what the members of the commission
6 would say. But it was important that the members of
7 the commission should have at their disposal such
8 materials as those enumerated in Article 4.

9 "REVISED PROSECUTION EXHIBIT 759.

10 "SHIGEMITSU stated that the Japanese side had
11 no objection to taking as a basis the treaties con-
12 cluded by the representatives of China and Russia,
13 but that, in addition, the Japanese side understood
14 that auxiliary material might be submitted to the com-
15 mission which would examine it with a view to making
16 more successful the work of the commission."

17 That paragraph was read when exhibit 759
18 was presented. The words "additional documents" were
19 used instead of "auxiliary material".

20 THE PRESIDENT: Will you please explain the
21 difference?

22 MR. FURNESS: I suppose there might be dif-
23 ferences in types of evidence where the boundary was
24 that were not documents.

25 "Proceeding:

1 "SHIGEMITSU said that on the whole he had no
2 objection to leaving Article 4 in the form in which
3 it was now explained by the Soviet side. As for the
4 auxiliary material he had referred to he thought there
5 could be no objection to their use."

6 There again "additional documents" were used
7 instead of "auxiliary material".

8 "SHIGEMITSU repeated that he had no objection
9 to leaving the formula of Article 4 in its present
10 form, but repeated that when speaking of the utiliza-
11 tion of auxiliary materials he had in mind what I had
12 told him last time and what had been drawn from the
13 contents of to-day's conversation. Thus, he,
14 SHIGEMITSU, considered that both sides understood this
15 point in the same way."

16 In that paragraph again "additional documents"
17 were used in exhibit 759 rather than "auxiliary ma-
18 terials".

19 "I immediately told SHIGEMITSU that for greater
20 clarity I could make this point still more precise.
21 The Japanese-Manchurian side cannot say: We cannot
22 accept such and such a treaty. As for the other docu-
23 ments submitted by one side or other, the other side
24 may say that it cannot accept such and such a document.
25 Herein lies the difference between the nature of the

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3 it was now explained by the Soviet side. As for the
4 auxiliary material he had referred to he thought there
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22 accept such and such a treaty. As for the other docu-
23 ments submitted by one side or other, the other side
24 may say that it cannot accept such and such a document.
25 Herein lies the difference between the nature of the

1 agreements signed by the representatives of Russia
2 and China and other documents. I think I made myself
3 clear and the Ambassador probably understood me.

4 "SHIGEMITSU answered that he understood it
5 thus: The treaties and agreements concluded between
6 Russia and China are made the basis of the work of the
7 commission and other, auxiliary matter is to be con-
8 sidered. Just how it is to be considered is a matter
9 for the commission to decide. All this considered,
10 he states that we had no differences."

11 The words "additional documents" were used
12 in exhibit 759 instead of "auxiliary matter".
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1 MR. TAVENNER: It is "auxiliary material"
2 instead of "auxiliary matter."

3 MR. FURNESS: In my copy it is "matter."

4 THE PRESIDENT: Ordinarily you wouldn't refer
5 to oral testimony as material.

6 MR. TAVENNER: It is "material" everywhere
7 I read it.

8 THE PRESIDENT: And an affidavit would be a
9 document.

10 MR. FURNESS: I tender for identification
11 a document from the Foreign Office, Official Business
12 Report for 1938, compiled by the First Section of the
13 Euro-Asiatic Bureau, Foreign Office, Tokyo, 1938.
14 It is defense document 1511. It is being tendered
15 merely for identification at this point. I will make
16 my tender of the excerpt later.

17 CLERK OF THE COURT: Defense document 1511
18 will receive exhibit No. 2647 for identification only.

19 (Whereupon, the document above
20 referred to was marked defense exhibit
21 No. 2647 for identification.)

22 MR. FURNESS: This document has been on file
23 for the required time under the rules of the Court.

24 I offer in evidence an excerpt from defense
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20 referred to was marked defense exhibit
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23 for the required time under the rules of the Court.

24 I offer in evidence an excerpt from defense
25 document No. 1511, secret Foreign Office official

1 report of the Changkufeng Incident. This is a factual
2 account of the incident, an official report admissible
3 under the Charter. It is not self-serving since it
4 was not published but was issued only to officials of
5 the Foreign Office.

6 THE PRESIDENT: General Vasiliev.

7 GENERAL VASILIEV: If the Tribunal please, I
8 object to the introduction of this document. This
9 report was made by one of the sections of one of the
10 bureaus of the Japanese Foreign Ministry. One cannot
11 say that it was an office having high authority, the
12 final opinion of which would have any value for the
13 Tribunal. The difficult and responsible task of the
14 Tribunal is that of clearing all the matters up and
15 establishing facts relying on documents and other
16 original sources. If this document were admitted then
17 there would remain nothing to be cleared because in the
18 report of this respectable office it is stated that the
19 Russians were to blame, that it was they who attacked
20 the poor Japanese.

21 Who wrote this? A Japanese office. A minor
22 Japanese office. From what sources the information was
23 taken and on what this report was based nobody knows.
24 In some cases references are made to documents, but
25 we do not see the documents. For instance, a map of

1 the Russian General Staff, published in 1911, is men-
2 tioned, page 1, last line, but where is this map?
3 The report mentions a telegram -- telegraphic directive
4 allegedly sent from Tokyo to Moscow to the Japanese
5 charge d'affaires NISHI, page 2, paragraph 3 from the
6 bottom of the page, but where is this instruction? A
7 telegram allegedly sent from Tokyo to Moscow to Ambassador
8 SHIGEMITSU is also referred to, page 4, the last part
9 of the third paragraph from the bottom, but where is
10 this telegram? Another telegram of the same kind is
11 mentioned on page 5, paragraph 3 from the bottom of
12 the page. Where is this telegram?

13 Certificates and affidavits to the effect that
14 these documents were burned are produced instead of
15 the documents, but why was not this report burned?
16 I ask you to reject the document.

17 MR. FURNESS: If the Court please, I submit it
18 has far greater probative value than exhibit 753 which
19 the Tribunal has had before it many times during this
20 presentation, a report on Japanese provocative acts
21 in the area of Lake Khasan, prepared March 21, 1946,
22 page 7,758 of the record. The same is true of exhibit
23 750, report on border violation; 751, report of
24 provocation actions of the Japanese in Lake Hanka area
25 and memo of the Red Army General Staff; exhibit 766,

1 also before this Tribunal within the past few days
2 on the provocative attack on the Japanese in Nomonhan
3 area in 1939, all dated march 1946, within two
4 months of the commencement of this trial, not only self-
5 serving to one of the parties in this trial, the Soviet
6 Union, but prepared specifically for the purposes of
7 this trial to convict these defendants. And we submit
8 they are of far less probative value than contemporary
9 documents prepared before this trial was ever considered.
10 The same is true of the many exhibits prepared by the
11 Red General Staff on the strength of the Kwantung
12 Army.

13 I submit this has far greater probative value
14 and should be received.

15 THE PRESIDENT: Well, it is a confidential
16 document and not mere propaganda. It should be taken
17 to express the genuine Japanese viewpoint, if it is
18 authoritative. Of course, the rule as to the proof
19 of contents of documents must be observed. I know
20 nothing about the merits of the other exhibits --
21 prosecution's exhibits -- referred to. There may have
22 been no contest about those.

23 MR. FURNESS: I think the Court will recall
24 that, from the very first day that evidence started to
25 be taken, I myself objected to the admission of reports

1 and evidence prepared for the purposes of this trial.
2 It came up particularly during the Chinese and Russian
3 phases.

4 THE PRESIDENT: By a majority the Court over-
5 rules the objection, of course except as to proof of
6 documents, and admits the document subject to that
7 requirements. Omit any part which purports to state
8 the contents of documents not produced or accounted
9 for. Such parts are not admitted.

10 MR. FURNESS: If your Honor please, we have
11 been trying to account for the non-production of docu-
12 ments by the production of evidence of the burning of
13 the Foreign Office and its files.

14 THE PRESIDENT: You will have complied with
15 the rule if you can show that the particular document
16 referred to has been proved already to have been destroyed

17 MR. FURNESS: Thank you, sir. I shall try to
18 do that.

19 CLERK OF THE COURT: Excerpt from defense
20 document 1511 will receive exhibit No. 2647-A.

21 (Whereupon, the document above
22 referred to was marked defense exhibit
23 No. 2647-A and received in evidence.)

24 MR. FURNESS: Beginning on page 1:
25 "Progress of the Incidents.

1 "Paragraph 1. The Changkufeng Incident.

2 "At about noon on July 11th, more than ten
3 Soviet troops appeared on the hill of Changkufeng,
4 Manchoukuo territory, and, advancing on to the side of
5 the hill facing Manchoukuo, began to dig trenches.
6 Their number gradually increased to forty on the 14th,
7 and they apparently intended to continue the illicit
8 occupation of the territory. At 9 p.m. on the 14th,
9 therefore, an instruction was wired from Foreign
10 Minister UGAKI to Mr. NISHI, Charge d'Affaires in
11 Moscow --" I will omit the next.

12 "Under this instruction, Charge D'Affaires
13 NISHI visited Mr. Stomoniakov ---"

14 THE PRESIDENT: You left out a line, didn't
15 you? ". . . Charge d'Affaires in Moscow --"

16 MR. FURNESS: ". . . to demand urgent with-
17 drawal of the Soviet troops.

18 "Under this instruction, Charge d'Affaires
19 NISHI visited Mr. Stomoniakov, Deputy Commissar for
20 Foreign Affairs of the Soviet Union, at noon on the
21 15th, and tendered him our demand. Mr. Stomoniakov
22 replied that he had no knowledge of the incident, that
23 he considered the statement as if Soviet troops had
24 crossed the border to have been based on inaccurate
25 reports, but that he would make prompt inquiry in this

1 matter.

2 "At 11 p.m. on the same day --"

3 THE PRESIDENT: General Vasiliev.

4 GENERAL VASILIEV: I understand that some
5 instruction is mentioned in this paragraph and in my
6 contention, as it is contrary to the rule of the
7 Tribunal, I ask you to disregard this part of the docu-
8 ment.

9 MR. FURNESS: That is the reason I paused when
10 I did, your Honor. You said I had left out a line.

11 THE PRESIDENT: Well, then how much more do
12 you leave out subject to any proof you can give us?

13 MR. FURNESS: I will try to avoid that, and
14 that is the reason I skipped from "to demand urgent
15 withdrawal of the Soviet troops." I thought
16 "instruction was wired from Foreign Minister UGAKI
17 to Mr. NISHI, Charge d'affaires in Moscow," without
18 stating the contents, is not objectionable.

19 THE PRESIDENT: You can read it if you can
20 produce the telegram or prove it was destroyed.

21 MR. FURNESS: Well, I thought we had proved
22 the destruction of all the telegrams, incoming and
23 outgoing, with regard to this incident.

24 THE PRESIDENT: Well, you rely on the evidence
25 of the witness who yesterday gave evidence as to the

1 destruction of documents relating to these border
2 incidents.

3 MR. FURNESS: Yes.

4 THE PRESIDENT: Well, we can hardly make a
5 determination now as to whether that has been proved.
6 It is sufficient for you to give the evidence of the
7 destruction.

8 MR. FURNESS: I have given that evidence, so
9 shall I continue to read?

10 THE PRESIDENT: I don't think we can stop
11 you from reading it.

12 MR. FURNESS: (Reading)

13 "At 11 p.m. on the same day, Mr. Stomonikov
14 requested Charge d'Affaires NISHI to visit him. During
15 the interview, Mr. Stomonikov insisted that the spot
16 where the incident occurred was clearly Soviet terri-
17 tory, and produced a map alleged to have been appended
18 to the Hunchun Border Protocol. Thereupon the Charge
19 d'Affaires explained the reason to the contrary, and
20 demanded withdrawal of the Soviet troops. Mr. Stomonikov
21 refused to accede, insisting that the Soviet side was
22 in no position to withdraw its troops from its own
23 territory on demand from any other Power. The inter-
24 view lasted four hours without coming to any conclu-
25 sion.

1 "The border-line in this region is stipulated
2 in the Peking Treaty of 1860 and the Hunchun Border
3 protocol of 1886 which is supplementary to the former.
4 The stipulations, however, in both treaties are so
5 simple that the running course of the border-line be-
6 tween border-marks is thereby only very indistinctly
7 indicated. Consequently, there has been no agreement
8 of opinions between Manchoukuo, which is assumed to
9 have inherited these international compacts, and the
10 Soviet Union. The Manchoukuoan Authorities understand
11 that, (1) according to a map prepared by the Russian
12 General Staff in 1911, the border-line runs from
13 north to south to the east of the Changchi (Lake
14 Hasang), which lies on the eastern side of Changkufeng,
15 and (2) even according to the Hunchun Border Protocol,
16 1886, it runs along the western side of Changchi at
17 the foot of the hill of Changkufeng. The Soviet
18 Authorities, on the other hand, insist that, according
19 to the Hunchun Border Protocol, the border-line runs
20 on the western side of Changchi, including Changkufeng
21 within Soviet territory.

22 "Acting on their own opinion in this regard,
23 the Manchoukuoan Authorities instructed Mr. SHIMOMURA,
24 Special Commissioner for Foreign Affairs at Harbin, to
25 protest against the Counsel-General of the Soviet

1 Union at Harbin. This he did by telephone on the
2 night of the 14th, and by visiting the Consul-General
3 on the evening of the 18th.

4 "The reason why Japan has demanded withdrawal
5 of the Soviet troops which have been occupying Chang-
6 kufeng lies in the principle of joint defense of Japan
7 and Manchoukuo, as any and all acts of menace to the
8 territory and order of Manchoukuo manifestly constitute,
9 at the same time, menace to the tranquility and existence
10 of Japan, especially in view of the geographical posi-
11 tion of the area in question.

12 "Late in the night on July 17th, an instruc-
13 tion was again wired to Charge d'Affaires NISHI to
14 fully explain the Japanese standpoint and demand
15 retreat of the Soviet troops back to the line which they
16 had occupied before July 11th, to wit, recovery of the
17 status quo ante. In view of the gravity of the
18 situation, a telegraphic order was also given to
19 Ambassador SHIGEMITSU, who was at that time on an
20 official business tour in Europe, to return immedi-
21 ately to Moscow. He arrived at his post on the 18th."

22 THE PRESIDENT: General Vasiliev.

23 GENERAL VASILIEV: I ask you to explain to
24 me the rule made by the Tribunal. Have I understood
25 it correctly, that if a reference to a document is

1 made and there is no document produced, such reference
2 must be disregarded?

3 THE RUSSION MONITOR: Must not be read.

4 GENERAL VASILIEV: Several documents have
5 been mentioned already. For instance, some map by
6 the Russian General Staff of 1911.

7 THE PRESIDENT: You haven't stated the whole
8 rule, General. The documents must be produced or we
9 must be satisfied that it is not available for some
10 good reason, for example, because of its destruction.
11 So you may give evidence of its destruction. But
12 we do not pronounce finally on that evidence as it
13 is given, because you, in giving -- may give rebuttal
14 evidence denying its destruction.

15 If you, the prosecution, admit the truth
16 of the evidence of the defense as to the destruction,
17 well and good. But you don't. Therefore, the ques-
18 tion of whether a document is destroyed remains open
19 until you give evidence later. But the mere giving
20 of the evidence is sufficient to warrant the recep-
21 tion of the evidence of the contents of the document.
22 Any other course would be impracticable.

23 GENERAL VASILIEV: I thank you for your
24 explanation, your Honor, and I will follow the ruling.

25 But all documents referred to prior to this

1 spoke about some Japanese documents, and here reference
2 is made to a Russian document, Russian map, and there
3 is nothing to indicate that this map was destroyed.
4 I ask you to strike out precisely this part concerning
5 this Russian map because there is no evidence that it
6 was destroyed.

7 MR. FURNESS: If your Honor please, there is
8 no evidence that it was in possession of the Foreign
9 Office except for inspection. I don't think we have
10 to account for its non-production in that case.

11 THE PRESIDENT: This man is stating what
12 the Manchukuoan authorities understand about a certain
13 map. He says, it begins on the bottom of the first
14 page: "The Manchoukuoan /authorities understand that,
15 (1) according to a map prepared by the Russian General
16 Staff in 1911, the border-line runs from north to south
17 to the east of the Changchi (Lake Hasang), which lies
18 on the eastern side of Changkufeng, and (2) even
19 according to the Hunchun Border Protocol, 1886, it
20 runs along the western side of Changchi at the foot of
21 the hill of Changkufeng."

22 It merely states the understanding of the
23 Manchukuoan authorities. It does not purport to prove
24 or to attempt to prove the contents of any document.
25 It is utterly valueless as proof, General, so you need

1 not worry about that.

2 GENERAL VASILIEV: But I have information that
3 there is no such map, map of 1911. There is no such
4 map in existence.

5 THE PRESIDENT: Well, we utterly disregard
6 it as proof of the existence of the map and of what the
7 map says. So your objection is upheld in effect, if
8 you are asking to disregard that as evidence of the
9 existence of the map and evidence of the contents.

10 GENERAL VASILIEV: Thank you, your Honor.

11 MR. FURNESS: Shall I proceed to read, sir?

12 THE PRESIDENT: After the recess.

13 We will recess for fifteen minutes.

14 (Whereupon, at 1445, a recess was
15 taken until 1500, after which the proceedings
16 were resumed as follows:)

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1 not worry about that.

2 GENERAL VASILIEV: But I have information that
3 there is no such map, map of 1911. There is no such
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now resumed.

3 MR. FURNESS: Continuing:

4 "During the time, it happened on the spot
5 that several members of the gendarme station at Riukon
6 (Korea), who went towards the evening of the 15th to
7 Changkufeng for reconnoitering, were fired at by Soviet
8 troops, and one of them, Corporal MATSUSHIMA, was
9 missing. On the night of the 17th, a Japanese detach-
10 ment on the first line despatched two Koreans as
11 emissaries to the Soviet side. Even after the 20th
12 they did not return. On the other hand, transportation
13 by trucks grew suddenly active after the 20th in the
14 interior of the Soviet territory, especially between
15 Poshiet and Novokievsk, as well as Novokievsk -- Hansi --
16 Siangshantung. This made reinforcements and strict
17 vigilance on the Japanese part inevitable, and thus
18 both sides stood vis-a-vis."

19 Skipping the next paragraph:

20 "On the borders, on the other hand, not only
21 Soviet troops on the scene in question were reinforced
22 rapidly, but also border-crossing from the Soviet side
23 was repeated on the land as well as in the air near
24 Manchuli, Suifenho and Hulin, between the 22nd and the
25 25th.

1 "In view of the gravity of the situation, the
2 Foreign Office dispatched Mr. MIURA, Secretary of the
3 Foreign Office, to the spot. He arrived at Hunchun
4 via Hsingking on the 23rd. As to the two emissaries
5 sent to the Soviet side, the Soviet Government pro-
6 posed, through the Japanese Consul-General at Vladi-
7 vostok, to return them as trespassers. They were
8 handed over to our detachment on the first line at a
9 place near the border mark No. 8 (at Changlingtzu) at
10 1.45 p.m. on the 26th.

11 "Such being the circumstance, the Japanese
12 Government wired on the 27th to the Ambassador to the
13 Soviet Union that, for the time being, the Government
14 would keep attentive silence and watch Soviet attitude.

15 "The Shatsaofeng Incident.

16 "At 9.30 a.m. on the 29th, about ten Soviet
17 troops crossed the line, which formed the border if
18 the Hunchun Border Protocol, insisted upon by the
19 Soviet Government, was to be called for authority, at
20 a place to the south of Shatsaofeng, north of Changku-
21 feng, trespassed on Manchoukuoan territory, and began
22 to dig trenches. Thereupon at 2.30 p.m. our border
23 patrol detachment drove the Soviet troops away, and
24 retreated to a height to the west (about 2 kilometers
25 south of Yangkwanping) in order to avoid any further

1 clash. At 4.30 p.m. the Soviet troops, having pre-
2 sumably judged our retreat as weakening of attitude,
3 attacked, with several tanks and under cover of the
4 artillery, the Japanese troops which had retreated as
5 mentioned above and was on vigilance. Our troops which
6 had been restraining themselves took up the challenge
7 for their self-defense. Soviet reinforcements were
8 continually increased, and so were ours, thus bringing
9 both troops face to face. The 30th passed in that
10 situation. That night, at 1.40 a.m. on the 31st, the
11 Soviet troops, together with the troops occupying
12 Changkufeng, and under cover of the artillery situated
13 southeast of Changchi, began a large-scale attack on
14 the Japanese troops. They were, therefore, obliged to
15 resort to a resolute counter-attack and completely
16 repulsed the Soviet troops, occupying at 6 a.m. that
17 day a height in the south of Shatsaofeng, and at 5.10
18 a.m. Changkufeng itself. In this clash the Japanese
19 troops captured 10 Soviet light tanks and many rifles
20 and ammunition.

21 "The Soviet troops having, however, apparently
22 resolved to recover the Changkufeng area occupied by the
23 Japanese troops, persistently repeated counter-attacks,
24 namely, against Suilungfeng at 4 a.m. on August 1st,
25 and on the afternoon of August 2nd against the

1 positions on Changkufeng and a height in the south of
2 Shatsaofeng with over ten aeroplanes, and again with
3 scores of aeroplanes in a formation. Then Soviet
4 aeroplanes bombed Manchoukuoan territory, as well as
5 Keiko, Koya, Riukun and other towns in Korea. Such
6 bombing beyond the border was continued almost every
7 day until the conclusion of truce. Also attacks by
8 land forces against the whole Changkufeng area were
9 repeated every night. In spite of all this, the
10 Japanese troops refrained themselves strictly from
11 crossing the border under the fundamental policy of
12 localizing the clash. They maintained their positions
13 without using even one aeroplane."

14 Skipping the two short paragraphs:

15 "On the 30th, Mr. Smetanin, Soviet Charge
16 d'Affaires in Tokyo, visited the Vice-Minister for
17 Foreign Affairs, and made a protest against the alleged
18 border-crossing of Japanese troops. On August 1st, on
19 our side, Mr. MIYAKAWA, First Secretary of Embassy in
20 the Soviet Union, visited the Chief of the Japanese
21 Section (in the absence of the Director of the Far
22 Eastern Bureau), and protested against the Shatsaofeng
23 incident under the instruction of the Foreign Minister
24 of August 1st. On the 2nd he visited the Director of
25 the Far Eastern Bureau, and protested against the

1 unwarranted acts of violence of Soviet aeroplanes. On
2 the same day Mr. Smetanin, Soviet Charge d'Affaires in
3 Tokyo, repeated the Soviet protest in a written form
4 to the Foreign Minister. During the time counter-
5 measures were being discussed in the Foreign Office in
6 close cooperation with the Army and the Navy. In the
7 afternoon on August 3rd, an instruction was given to
8 Ambassador SHIGEMITSU by telegram to make the following
9 proposal:

10 "In view of the very tense situation on the
11 scene of the incident, we deem it necessary to propose
12 an immediate cessation of fighting, and are, at the
13 time of writing (9 p.m.) inviting the Soviet Charge
14 d'Affaires to the Foreign Office. As the matter, how-
15 ever, needs attention in utmost urgency, we request
16 you, on your part, to discuss as soon as possible with
17 the Foreign Commissariat Authorities, and propose to
18 stop fighting now and immediately. If the Soviet
19 Government agrees thereto, we are ready to confer on
20 concrete measures."

21 "(These concrete measures consisted in the
22 Soviet troops retreating to the line connecting the
23 heights east of Changchi, and the Japanese troops to
24 the line connecting the height to the west of Changku-
25 feng with the height to the southwest of a nameless

1 lake lying on the western side of Shatsaofeng, i.e.,
2 the position which the Japanese troops occupied on
3 July 30th.) On the morning of August 4th, Mr.
4 HORINOUCHI, Vice-Minister for Foreign Affairs, invited
5 Mr. Smetanin, Soviet Charge d'Affaires, to the Foreign
6 Office, and requested him to inform his home Govern-
7 ment of the above-mentioned truce proposal and give
8 its reply. The Ambassador to the Soviet Union was
9 informed of the details of this interview by telegram,
10 and was instructed to pursue concrete negotiations in
11 Moscow."

12 Going down to paragraph numbered III:

13 "The Second Interview between SHIGEMITSU
14 and Litvinov.

15 "As it was surmised from the first interview
16 on the 4th that the Soviet side had a disposition to
17 cease fighting, provided that conditions were satis-
18 factory, studies were made in the Foreign Office, and
19 an instruction was given by telegram on the 6th to
20 negotiate with Mr. Litvinov, tendering him the following
21 concrete conditions:

22 "1. As a concrete step to stop fighting, the
23 lines of retreat for both troops shall be in accordance
24 with either of the two following proposals:

25 "The first proposal. The Soviet troops shall

1 retreat to the line east of Changchi, and the Japanese
2 troops to that connecting the height to the west of
3 Changkufeng with the height to the southwest of a
4 nameless lake lying on the western side of Shatsaofeng.
5 Both troops refrain from entering the zone between the
6 lines until the conflict will be settled.

7 "The second proposal. The Japanese troops
8 shall retreat to the line mentioned in the first pro-
9 posal, and both sides shall not enter the zone in
10 between until the settlement of the conflict, on con-
11 dition that Soviet troops do not find themselves west
12 of Changchi.

13 "2. Negotiations on demarcation of the border
14 on and about the scene of the incident shall, after
15 cessation of fighting, be entered into on the following
16 conditions:

17 "(a) We have no objection to taking the
18 Hunchun Border Protocol as the basis for negotiations.

19 "(b) The border to be demarcated will be that
20 stretch between the border mark T and the border mark
21 No. 1.

22 "(c) The border shall be demarcated by a
23 joint investigation on the spot, consulting materials
24 in the possession of both Manchoukuoan and Soviet
25 Authorities. The direct parties concerned are the

1 Manchoukuoan and Soviet Authorities, and the Japanese
2 will be present."

3 Skipping to IV:
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1 "IV. The Third Interview between SHIGEMITSU
2 and Litvinov.

3 "As it was disclosed at the second interview
4 that the Soviet Authorities had a disposition to conclude
5 truce on more concrete conditions, an instruction was
6 wired on August 9th to the Ambassador, adding a third
7 proposal to the two former ones contained in the instruc-
8 tion of the 6th, namely:

9 "(a) The Japanese Government agrees that
10 both troops shall be detached at a certain distance,
11 for instance one kilometer on each side of the border,
12 taking as the boundary the line of the Hunchun Border
13 Protocol, on which the Soviet Government insists, i.e.,
14 the line connecting the tops of a height in the south
15 of Shatsaofeng, Chengkufeng and Height 52.

16 "(b) Border demarcation shall be conducted
17 by a joint investigation on the spot, consulting mater-
18 ials in the possession of both Manchoukuoan and Soviet
19 Authorities.

20 "(c) A Border Demarcation Commission shall be
21 formed consisting of two delegates each for Manchou-
22 kuo and the Soviet Union, while a Japanese representa-
23 tive will join it merely as an observer. The instruc-
24 tions aimed at achieving item (a) mentioned above, and
25 left (b) and (c) to the Ambassador's discretion to

1 change, if need be, in order to make terms. Further,
2 another instruction was wired on the 10th with a pro-
3 posal apparently more acceptable to the Soviet Govern-
4 ment, though in substance not much different from
5 the third proposal, namely, the Japanese troops should
6 retreat to the line of July 29th, as proposed by the
7 Soviet Government, and both Japanese and Soviet troops
8 should not enter a zone to be made at a certain dis-
9 tance (for instance, one kilometer each) on both sides
10 of the line of the Hunchun Border Protocol, on which
11 the Soviet Government insisted, until demarcation of
12 the border shall have been finished by the Border De-
13 marcation Commission.

1 "Under these instructions, Ambassador SAIGE-
2 MITSU had an interview with Mr. Litvinov from 7 till
3 9:30 p.m. on August 10th, and showed first the whole
4 concrete conditions for truce. After deep deliberations,
5 Mr. Litvinov, on his part, made counter-proposals, and
6 they provisionally agreed upon the following terms.
7 The Ambassador returned to his Embassy pending final
8 settlement, and at past 11 p.m. he sent Mr. MIYAKAWA,
9 Secretary of the Embassy, to confirm our agreement
10 to the terms.

11 "1. At noon (Maritime Province time) on the
12 11th, both troops shall cease firing.

13 "2. The Japanese troops shall retreat one
14 kilometer from the line which they occupied at 12
15 o'clock (Maritime Province time) on the night of the
16 10th (i.e., before the time of the truce). The Soviet
17 troops shall maintain the positions they occupied at the
18 same time.

19 "3. This agreement shall be put into prac-
20 tice by representatives of both troops on the scene
21 (once fighting is stopped, the representatives will be
22 able to meet immediately).

23 "Mr. Litvinov, however, proposed to Secretary
24 MIYAKAWA that 'both Soviet and Japanese troops remain
25 on the lines they occupy at 12 o'clock on the night of

1 August 10th-11th,' on the ground that it would be
2 fair not to demand the unilateral retreat of the
3 Japanese troops. Expressing his belief that the
4 Ambassador would no doubt approve this, Secretary
5 MIYAKAWA stated that he would at once return to the
6 Embassy and give a definite reply of the Ambassador by
7 telephone. Thus taking leave, he later communicated
8 this approval by telephone. Mr. Litvinov then again
9 requested Ambassador SHIGEMITSU to visit him, and pro-
10 ducing the agreement in a written form prepared before-
11 hand, confirmed whether the Ambassador had any objection,
12 and reiterated at the same time his insistence upon
13 the composition of the Border Demarcation Commission
14 (namely, two Soviet delegates, one delegate each from
15 Japan and Manchoukuo, and one delegate of a non-party
16 nation), and upon the materials to be used as bases for
17 the investigation. The Ambassador repeated the Japanese
18 contention, and this led to no agreement of opinion in
19 regard to the demarcation of the border. But the agree-
20 ment on truce was concluded on the above-mentioned
21 conditions."

22 Now, if your Honor please, if there is any
23 doubt as to the meaning of the markings on the sketch
24 map attached to the Witness MIURA's affidavit, I would
25 be very glad to call General TANAKA to explain what those

TANAKA

DIRECT

1 signs mean in military terms.

2 THE PRESIDENT: At this stage I cannot say
3 whether there is any doubt or not. If you for one
4 moment think there is doubt, you have the responsibility
5 of calling TANAKA, or recalling him.

6 MR. FURNESS: He is here and can be recalled.
7 R Y U K U C H I T A N A K A, recalled as a witness
8 on behalf of the defense, testified through
9 Japanese interpreters as follows:

10 THE PRESIDENT: You are still on your former
11 oath.

12 DIRECT EXAMINATION

13 MR. FURNESS: May the witness be shown
14 exhibit 2642.

15 (Whereupon, a document was handed to
16 the witness.)

17 MR. FURNESS: The witness is being shown
18 only the exhibit B which is attached to exhibit 2642.
19 BY MR. FURNESS:

20 Q General TANAKA, do you see the sign which
21 appears to be to the right of the summit of a hill and
22 to the left of a large lake?

23 A Yes.

24 Q As a military man does that sign mean anything
25 to you?

TANAKA

DIRECT

1 A Yes.

2 Q What does it mean?

3 A These signs indicate Soviet trenches, and
4 behind that Soviet tanks.

5 Q The line indicating Soviet trenches is to the
6 left of what appears to be the summit of a hill, does
7 it?

8 A Below what appears to be the summit.

9 Q And the sign to the right of that summit, does
10 that indicate tanks?

11 A Yes.

12 Q Now, the same type of heavy line up towards
13 the top of the paper, to-wit, the line drawn to 29 July;
14 what does that indicate?

15 A To the right are the Soviet trenches, and the
16 signs below indicate -- and to the left Japanese troops.

17 Q And what do the crosses mean?

18 MR. TAVENNER: I object.

19 A The crosses indicate where the troops of both
20 sides clashed.

21 THE PRESIDENT: Mr. Tavenner.

22 MR. TAVENNER: If the Tribunal please, I think
23 it is quite apparent that a line, a broken line such as
24 that appearing on the map could easily be the boundary
25 line as to which there has been considerable testimony.

TANAKA

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1 THE PRESIDENT: This only goes to weight,
2 Mr. Tavenner. This is a map allegedly drawn by a
3 Japanese officer on the spot. Here is a Japanese
4 general testifying as to what these markings mean
5 according to his peculiar knowledge of Japanese military
6 markings. And, as far as we understand, he is not
7 testifying about that long line which is broken up
8 with small crosses.

9 MR. TAVENNER: My objection was directed
10 toward the long broken line.

11 THE PRESIDENT: We do not understand the wit-
12 ness to be referring to that. We may be under mis-
13 apprehension.

14 Q General TANAKA, in referring to the crosses,
15 are you referring to the crosses on that broken line,
16 or the crosses well to the left of it, the two crosses?

17 A I was referring to the large cross-marks to
18 the left of that broken line.

19 MR. FURNESS: No further questions.
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1 THE PRESIDENT: General Vasiliev.

2 GENERAL VASILIEV: May I ask a few questions.

3 CROSS-EXAMINATION

4 BY GENERAL VASILIEV:

5 Q Mr. Witness, tell me, you contend that
6 crosses which are to the left, that is to the west,
7 mean the place of the clash -- mean the place where
8 the clash occurred?

9 A I did not confirm because I was not at
10 the spot, on the spot at the time.

11 THE PRESIDENT: That is what you said.

12 Q I understood you were asked what all those
13 signs mean in military language. That is what you
14 were asked.

15 A Yes, that is so.

16 THE INTERPRETER: The witness made that
17 statement before the Russian prosecutor directed that
18 question.

19 Q I understood that you told that those
20 crosses meant the place where the clash occurred.

21 A In accordance with Japanese army signs on
22 such documents I come to the conclusion that that
23 indicates points where army troops clash -- signs on
24 maps.

25 GENERAL VASILIEV: I am sorry but the

TANAKA

CROSS

1 witness doesn't answer my questions. I asked him
2 to tell what crosses -- the witness was asked what
3 crosses put on the map mean in Japanese military
4 language and the witness remembers that according
5 to his contention the fighting took place at this
6 place.

7 THE PRESIDENT: No, that is not what he
8 said. I do not think you heard him right, General.
9 He said, in effect, those crosses are used by the
10 Japanese military people to indicate where clashes
11 occurred. He did not say that the clashes occurred
12 there.

13 GENERAL VASILIEV: Then I apologize.
14 Probably I don't understand him correctly. I have
15 another question.

16 Q Can you tell, Mr. Witness, what regu-
17 lations say that crosses indicate -- by crosses
18 the places where the clashes occur are indicated?

19 A This is army practice; practice of the
20 Japanese Army.

21 Q What are those regulations of the Japanese
22 Army? Can you name them so we can check them?

23 THE PRESIDENT: There are so many that we
24 could not ask him that.

25 GENERAL VASILIEV: If there was such a

1 witness doesn't answer my questions. I asked him
2 to tell what crosses -- the witness was asked what
3 crosses put on the map mean in Japanese military
4 language and the witness remembers that according
5 to his contention the fighting took place at this
6 place.

7 THE WITNESS: No, that is not what he
8 said. I do not think you heard him right, General
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10 Japanese military people to indicate where clashes
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20 Japanese army.

21 Q What are those regulations of the Japanese
22 army? Can you name them so we can check them?

23 THE PRESIDENT: There are so many that we
24 could not ask him that.

25 GENERAL VASILIEV: If there was such a

1 practice established in the Japanese army, probably
2 it was written down in some regulations that such
3 practice is accepted by the Japanese army.

4 THE PRESIDENT: It probably is somewhere
5 in instructions relating to map drawing. We would
6 hardly insist on the production of those instructions.

7 GENERAL VASILIEV: If the witness states
8 that by crosses the places of occurrence of clashes
9 are indicated I have a right to ask on what grounds
10 does he tell it?

11 THE PRESIDENT: You may ask him that.

12 GENERAL VASILIEV: That is what I asked
13 him but he didn't answer me. He told that it
14 was general practice. He didn't tell anything about
15 a particular source.

16 Q Mr. Witness, can you tell me to what book,
17 to what textbook, can I refer to get such information?
18 Where can I get the information that cross sign means
19 the place of the clash? The military language requires
20 exactness. Answer briefly; can you or can you not
21 indicate such source?

22 A I can reply. There is a long practice or
23 custom in the Japanese army ever since the creation
24 of the Japanese army in the early part of the Meiji
25 Era to indicate with cross signs the point at which

TANAKA

CROSS

1 Japanese troops clash with enemy troops. Up to the
2 Russo-Japanese war cross signs were made with markings
3 of sword with the hilt on but in more recent times
4 this was simplified by simple "x" marks. These signs
5 were not decided upon by instructions or orders from
6 the Chief of the General Staff or from the War
7 Minister. These were employed generally as a custom
8 in the Japanese army. In earlier times for the purpose
9 of study of military tactics various data was obtained
10 from many sources and the results thereof was at one
11 time published in book form by the army Kaikosha.
12 Therefore they do not exist as regulations.

13 THE PRESIDENT: To the left of the --

14 A (Continuing) They were only practices in
15 long use.

16 Q One question more--

17 THE PRESIDENT: To the left of the two
18 crosses there are two markings which one of my
19 colleagues would like to have explained.

20 THE WITNESS: I do not quite understand
21 what is being referred to.

22 THE PRESIDENT: You have given evidence
23 about the meaning of two crosses. To the left of
24 each of those crosses there are markings. What do
25 those markings indicate to you?

TANAKA

CROSS

1 THE WITNESS: It indicates that there were
2 Japanese troops there.

3 THE PRESIDENT: What particular kind of
4 troops?

5 THE WITNESS: Infantry.

6 THE PRESIDENT: In both cases?

7 THE WITNESS: Yes.

8 THE PRESIDENT: Yes, General.

9 GENERAL VASILIEV: May I ask this question:
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TANAKA

CROSS

BY GENERAL VASILIEV (Continued):

1 Q Will you tell me, Mr. Witness, here under
2 the date, "July 29," an arrow points to a circle.
3 What does the circle mean?
4

5 A I do not understand the meaning of that
6 question.

7 Q I repeat. To the right there is an in-
8 scription, "July 29." This line goes to the left and
9 reaches up to the circle, and I ask what does the
10 circle mean?

11 MR. FURNESS: If your Honor please, I am
12 not sure whether the witness can read English or
13 not, and he refers to "July 29."

14 GENERAL VASILIEV: But the circle means the
15 same in any language.

16 THE PRESIDENT: It is the date that is the
17 trouble. That's in English.

18 GENERAL VASILIEV: No, I mean -- I want to
19 know what does the circle mean to which the line goes
20 from the date, "July 29," and I think the witness
21 knows English enough to read this date.

22 THE WITNESS: I understand. It is a con-
23 trol line indicating high ground -- an elevation.

24 Q Somewhat to the right of this circle there
25 is a broken line which consists of a cross and a

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1 dash. What does this line mean?

2 A That is -- that indicates the borderline as
3 the Soviet Union interpreted the Hunchun Agreement.

4 Q Thus, here a borderline is drawn not across
5 the summit of the hill but somewhat to the right --
6 to the foot of the hill.

7 A According to this map, the line happens to
8 run on the other side of the heights -- in this area.

9 Q And when you gave your testimony you con-
10 firmed that according to the Hunchun Agreement the
11 borderline passes along the crest of the mountains.

12 A I did not say so.

13 Q I could have quoted the page of the trans-
14 cript. Have another look at this map.

15 May the witness be shown the map attached
16 to the Hunchun Agreement?

17 (Whereupon, a document was handed
18 to the witness.)

19 Can you confirm that, according to this map,
20 the borderline passes along the crest of the mount-
21 ains?

22 THE PRESIDENT: Major Furness.

23 MR. FURNESS: If your Honor please, is the
24 witness being shown a map from an exhibit?

25 GENERAL VASILIEV: That is quite correct;

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1 exhibit 2175.

2 MR. FURNESS: If the Court please, if my
3 memory serves me correctly, the map attached to
4 exhibit 2175 is black. The background is black and
5 the lines are white. I did not hear the prosecutor
6 ask that the map attached to exhibit 2175 be shown
7 to the witness.

8 THE PRESIDENT: He asked for the map
9 attached to the Hunchun Agreement which is a very
10 early exhibit.

11 MR. FURNESS: I think that map is in the
12 Clerk's hands now.

13 THE PRESIDENT: It is a black map as you say,
14 Major Furness, with white markings.

15 MR. FURNESS: And the one in the hands of
16 the witness is white.

17 THE PRESIDENT: Well, it is not the Russian
18 prosecutor's fault because he asked for the map
19 attached to the Hunchun Agreement. He may have
20 handed the wrong one, but it was handed to him,
21 wasn't it?

22 MR. FURNESS: He said directly, when I asked
23 the question, that it was the map attached that was
24 part of exhibit 2175.

25 GENERAL VASILIEV: May I say a few words?

THE PRESIDENT: You may.

GENERAL VASILIEV: Major Furness has taken liberty to blame us of making objectionable actions.

THE PRESIDENT: He is quite right in pointing out that the wrong map was given to the witness, if such be the case.

GENERAL VASILIEV: Yes, if that were so, but it isn't so. That is why I say it, and I can explain it.

THE PRESIDENT: We will hear you, General.

GENERAL VASILIEV: This map is attached to two exhibits. This is precisely the same map -- the same photostat copy of the same map. I ask Mr. Furness to give me possibility to say all I want to say. He interrupts me several times.

Exhibit 753 and the map attached to it caused an objection on the part of the defense on the ground of the quality of the printing -- of the boundary line. Then, the same map was produced again in large copy. These explanations were made to the Court already.

Exhibit was received without any objections on the part of the defense. This exhibit is No. 2175. This is a photostatic copy of an original map attached to the Hunchun Agreement. It is

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1 original size, not an excerpt from the map -- not
2 a part of the map -- full map. In all minute de-
3 tails, it is the same map as the map of exhibit
4 753, but it is more clear, and the scale of this
5 map is larger. That's the reason why I gave this map
6 to the witness.

7 THE PRESIDENT: All the maps attached to
8 exhibit 2175 are black maps with white markings.

9 MR. FURNESS: If your Honor please, this
10 can be very easily cleared up by asking the Clerk
11 whether the exhibit of 2175 which he had doesn't
12 still have the map attached to it.

13 THE PRESIDENT: I should make it clear that
14 the Clerk did not hand that map to the witness. I
15 thought he did. I was wrong. You could clear it
16 up between now and Monday morning.

17 We will adjourn until half-past nine on
18 Monday morning.

19 (Whereupon, at 1555, an adjourn-
20 ment was taken until Monday, 26 May 1947,
21 at 0930.)
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